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# LECTURES

ON

## The History of the Middle Ages

BY

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## PREFACE.

In giving these lectures to the Press I am yielding to repeated requests made by my students. They have been given to my class substantially in the form in which they are here presented. I am quite aware of their defects. It has been impossible in the time at my disposal to enter into the details of history, and I take it for granted that students attending the higher institutions of learning have already acquired a tolerable general knowledge of history.

History is essentially a practical study, but it can only be such as we seek to understand the principles which have been the moving principles, and to trace their development. This indeed implies a knowledge of facts, but this knowledge can only be practical as it suggests problems which it must be our purpose to analyze and explain.

As in the natural sciences phenomena are what the student must carefully observe in order to explain them, show their cause, and point out their connection with other phenomena; so history is an inductive science in as much as we must carefully collect our facts, but also must find out how they came about, what is their meaning, and what is their relation to other facts with which they stand in a connection more or less close. History implies research and generalisation; only as it does this can it give a conscious-

ness and a meaning to facts which otherwise would seem without life or purpose. In this lies its practical value that we are enabled to discern the principles at work, to trace their development, and see the effects which they have produced.

We are thus able to gather lessons which are not only important to the statesman, but for each of us in our social, political, and even religious life. This is the view which Carlyle takes when he says, "History is the letter which the old generations write and posthumously transmit to the new," but he adds, "Our letter of instructions comes to us in the saddest state; falsified, blotted out, torn, lost, and but a shred of it in existence; this too, so difficult to read or spell. Unspeakably precious meanwhile is our shred of a letter such as we have it. Only he who understands what he has can know what should be and what will be."

The difficulty of spelling out this shred of a letter come to us from the past will surely not deter the thoughtful and ambitious student; it ought rather to give zest to his studies. But he must go to this letter of instruction, torn and illegible as it too often is, in order that he may form a truer idea of its character, and a more accurate estimate of the instruction it conveys. We want to know how contemporaries viewed the facts, how those who wrote the letter thought and felt, and how far they understood the prin-

ciples which they were instrumental in working out. In this way will the facts become more real to us, and the lessons more easily apprehended.

The student of Greek History who carefully reads Thucydides will be able to form a truer idea of the attitude of parties in the Peloponnesian wars as well as a truer idea of Greek life than from a study of even Grote or Curtius. In like manner a study of Livy or Tacitus may give us a clearer apprehension of the events which they record than even the able modern histories by Mommsen or Duruy, by Merivale or Gibbon, while the Pandects of Justinian and the Code of Theodosius will afford a more real knowledge of Rome's later constitution than even the learned works of Marquardt and Madvig.

Coming to a later period the student ought to make himself familiar with the writings of Jornandes, of Procopius, of Ammianus Marcellinus, and Paulus Diaconus, if he would understand the movements of the several Gothic tribes that invaded the Roman provinces. While Gregory of Tours and the other writers included in Mon. Guizot's Collection of Memoirs, or the more accurate copies made by Herr Pertz and his collaborators, together with the Capitularia of the Merovingian and Carolingian kings will give a more accurate conception of the state of affairs during those periods than we can gain from any other source.

In England, the very valuable Roll Series is

a veritable mine of information with which the student ought to make himself familiar. These several collections cover the whole of the period of the Middle Ages, and the student should make them the subject of accurate study rather than be satisfied with more modern works.

I indeed know of no late works of value on the History of the Middle Ages which are written in English. Hallam's History of the Middle Ages is very valuable, but later research has given a different colouring to many of the facts which he relates. Guizot's lectures on the Civilization of France, as well as of Europe, have been translated, but he formed mistaken views of the character of the early Frankish settlement, and these have affected his representation of the feudal system. "Mediaeval Europe" by the Harvard professor, Mr. Emerton, is almost entirely ecclesiastical in its character. Messieurs Bemont's and Monod's "History of the Middle Ages," which has also been translated, is perhaps the best of modern works, but is to my mind somewhat diffuse, and rather deficient in method.

My purpose has been to trace the simple development of the several departments of the political life of the Middle Ages—not only of the church but, also of the legal, the constitutional, and legislative administration as well as the intellectual and economic life. How far I have succeeded I must leave to others to judge.

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## LECTURE I.

### THE CONTINUITY OF HISTORY.

I purpose in the following lectures to treat of the History of the Middle Ages. The period is of special interest and importance, as we must trace back to it the rise of our modern civilization; but it is a period to which it is very difficult, if not impossible, to assign definite limits. The very term Middle Ages seems to imply that it is a period of transition, that it stands in some relation to what preceded, and that it had some influence on what followed.

Robertson, however, who was long regarded as a leading authority, in his introduction to the history of Charles V, writes: "Very faint vestiges of the Roman policy, jurisprudence, arts or literature remain. New forms of government, new laws, new manners, new dresses, new languages, and new names of men and countries were everywhere introduced." In a similar way, Bishop Stubbs, in one of his very interesting lectures, delivered when he was Professor at Oxford, draws a contrast between ancient and mediaeval history, and represents ancient his-

tory as a closed book, or as a skeleton from which the life has departed, while the period of mediaeval history is the cradle of all modern civilization, and marks the beginning of a new life.

With greater truth Guizot says that Rome never died, for though the provinces were overrun, she herself was never conquered; she was repeatedly besieged, and more than once occupied, but the occupation was not permanent, and she never submitted to the yoke of the barbarians. She survived all the changes of her hard fate to communicate much of her old life, and customs, and institutions to the new nationalities, which rose on the ruins of the provinces.

Convinced of the continuity of history, I believe that much of history is unintelligible unless we keep this continuity constantly in view, that many of the features of modern society will be misunderstood unless we can trace them to their origin, and that the roots of our modern civilization will be found deeply embedded in the old Roman soil.

But the changes which take place from time to time are so very gradual that it is scarcely ever possible to mark them distinctly, and indeed it is very often the weightiest events which pass most silently, and are the least observed. Carlyle very aptly remarks, "Our clocks strike when there is a change from hour to hour, but

no hammer on the horologue of time peals through the universe when there is a change from era to era."

I shall not, therefore, attempt to define any limits between the two periods, but shall rather seek to follow the threads of connection between them, as far as may be necessary or advisable for a better understanding of the development of mediaeval civilization.

It is quite true that the Sycthic and Gothic hordes that invaded Italy did bring to an end the Roman Empire of the West, but it is very remarkable how very soon, and to what an extent the Gothic tribes lost their distinctively Gothic character, and accepted the civilization, albeit *effete* civilization, of the old Empire. None made any attempt to substitute their own mode of government for the existing Roman. They simply adopted the Roman system, and in all respects identified themselves with it, ruling according to the spirit, where not in the very terms, of the Theodosian code. Their municipal institutions were largely copied from the municipal institutions of the empire, where indeed they were not the continuation of these. Their own religion gave place to the religion of the Roman Church. Their language, in many instances, was soon exchanged for the more liquid Latin. Their education and culture was little else than the further development of the Roman,

and before long Roman blood freely commingled in the veins of the Gothic conquerors.

It seems proper then to inquire into the causes of the fall of Rome, to learn as far as possible what circumstances opened the way for the rise of new nationalities, and gave a tone and character to their institutions.

A study of history assures us that, though there are certain great principles which seem to be fixed, there must be progress in adapting these principles to the ever changing circumstances of our social and political life. In the political institutions of the old world, we cannot but see that in the several kingdoms there was a want of freedom, a want of elasticity, a lack of power to adapt themselves to their growing development. To discover this, we do not require to study the constitutions of the kingdoms of Asia, or that of Egypt, for we may find the same in the constitution of Rome. The growth of the power of Rome was rapid, and she extended her conquests till she became the great power, to which most of the kingdoms of the world known to that day were subject. Rome, mistress of the world, was her proud title, yet she never succeeded in adapting her government to her vast conquests. Throughout the period of the Republic, as well as under the earlier Empire, her government was essentially municipal, and she failed to rise above this. She did not adapt her

constitution to the needs of her great expansion, and her power continued to be little more than a confederation of municipalities, which were not bound to one another, and perhaps still less to Rome, by a community of sympathy or interests. The imperial system failed to supply the necessary cohesion. It certainly did not bring the provinces more closely together; it did not unite them in a common purpose, but rather by its extreme exactions, and its exercise of arbitrary power, hastened the crisis which resulted in the Empire's fall.

It shall be my purpose in succeeding lectures to seek to show how, while accepting certain facts from the Roman constitution, the new nationalities, which rose on the ruins of the Empire, supplied in some measure those characteristics which Rome lacked, and were marked by something of that elasticity and power of constitutional expansion, which are essential to an advancing civilization. Indeed, there is scarcely a phase in the life of the Middle Ages where the influence of Gothic energy and freedom may not be traced. The old codes seemed to acquire new vigour. The Romance languages were earliest and most fully developed where the Gothic element was strongest, in the Visigothic districts of Spain, in France, even in Normandy, and in Italy; not in the south, not in the Papal States, nor in Rome herself, but rather in that part of

Italy which Ostrogoth and Lombard had made peculiarly their own. It was in those northern districts that the great universities were established, and it was in the purer dialect of those northern districts that Dante, Boccaccio and Petrarch wrote, while the Lombard Ferrara was the birthplace of Ariosto. It was, too, in those northern districts, and in the Lombard duchies of Beneventum and Salerno in the South, that commerce and manufactures were established, and the spirit of freedom gave life to the Lombard and Tuscan republics. It was too in those same northern districts that modern art and architecture first developed, and produced that combination of the Roman and Gothic which we find in the Romanesque churches of Milan and Pisa, of Florence and Lucca, of Verona and Modena.

We may, however, especially distinguish three bonds which connected the Roman world with the world of the Middle Ages. In these we may perhaps discover most clearly the mutual influence of Roman and Gothic elements working on each other, the Church, the judicial system or the Roman law, and the municipal system.

The Church became a great bond of union, a great principle of civilization, uniting the Roman with the new nationalities. The Bishop of Rome very early put forth claims to supremacy. In the beginning of the sixth century, the claim

was made by Innocent I, and before the close of the century Gelasius and Symmachus maintained that the dignity of "the supreme Pontiff"—the proud title assumed by Symmachus—was superior to that of the emperor.

The Eastern Church might have put forth the claim to supremacy, but she came more and more under the authority of the emperor, and with the loss of her independence, she lost any hope of becoming the centre of the Christian world. She never exercised any but a mere nominal control over the churches of Asia or Africa, and in the seventh century these churches were annihilated by the growing power of Islam. From that time, the Eastern Church fell rapidly into stagnation and decay, and left the Church of Rome without a rival. Step by step, the Church of Rome advanced and strengthened her claim to the headship of the Christian world. She had been able to resist the storms which followed the Gothic invasions, and by the growth of her power Rome became the capital of the new as she had been of the ancient world. But the Church was to carry the new and invigorated Rome far beyond the limits which had been gained by the empire. She, however, went forth to conquer not under the old insignia of the Roman eagle, but under the banner of the Cross, not with disciplined legionaries, but with an army of Christian monks, and to supplant the

gods of the Eddas not by the deities of Old Rome, but by the truer and diviner image of the crucified Christ.

But the supremacy of the Papacy of necessity implied the unity of the Church. One by one, the Gothic tribes submitted to her, and the Arianism which they had earlier adopted yielded to her orthodoxy. But if the Church extended her power and influence, the several peoples that received her teaching, and acknowledged her authority, formed one great society, moved by common sympathies and common interests, separated from the Greek and Slav, from Moor and Arab, who from time to time throughout the Middle Ages threatened the independence of Western Europe.

From the ninth to the fourteenth century, the Church derived much support through its connection with the royal power, as represented by Charlemagne and his successors, or later by the German kings of the Saxon, Franconian, and Swabian families. Charlemagne subdued the greater part of Europe to his authority, but in doing so he prepared the way for the extension of the Church. Otto and his successors at a subsequent period aided the Church in her straits from time to time, and enabled her to maintain her power as the head of the united Christendom. There were indeed several occasions within that period, when the jealousy, or

the ambition of one or the other party was the cause of bitter strife, but there were also occasions when all the nations of Western Europe were united under the banners of the Church for a common object. Such were the Crusades, when Visigoth and Ostrogoth, Frank and Anglo-Saxon, emperor and king, vassal and serf, forgot their several differences, and only vied with each other in seeking to rescue the birth-place of the Church from the hands of the infidel.

After the captivity at Avignon, the Church lost much of her power, and instead of being a source of union was rather the cause of much contention. A century and a half later came the Reformation, when she altogether ceased to be a bond of union. Still the influence of the old civilization on the new was not broken. The Reformation was largely due to the revival of learning, and this was almost entirely directed to the studies of ancient Rome and Greece, when the writings of Livy and Tacitus became the models for modern historians.

But if the Church was thus a bond of union between ancient and mediæval civilization, scarcely less important was the influence of the continued study and practice of Roman law. Each of the Gothic tribes had its distinctive legal code; the Salian and Ripurian Franks, the Burgundians, the Visigoths, the Lombards, and also

the Anglians and Saxons. But these rude codes were not adapted to an advancing civilization. The various tribes in the primitive social organization had not arrived at the understanding of general principles which should govern society. Nearly all very soon accepted the Roman code as better adapted to their wholly changed circumstances, and even before the Roman code was fully accepted by the Franks, Gallo-Romans were allowed to invoke the Roman, and to be tried under it. For a short time under Charlemagne, there was a return to the Salic code, but under his successors the Roman code reacquired its influence. Under feudal rule, however, it fell again into desuetude to be revived by Phillip Augustus, and to assume a more definite form in the *Etablissement* of St. Louis.

Among the Visigoths and the Burgundians any of Roman descent were, just as under the Franks, allowed to invoke the Roman law, while the code of the Visigoths shows very evidently the influence of the Theodosian code, though with a strong clerical element.

The officers appointed to administer the law for the most part retained their Roman names, and their functions were the same as in the old Roman regime. In Italy, the *Decretum Theodoriei* is little else than a modification of the Theodosian code. The laws of the Lombard kings also show a similar adaptation of the Ro-

man legal system, though here and there the influence of Charlemagne is very evident, and the names of the officers who were to administer the law are very often rather German than Roman. Early in the twelfth century, the University of Bologna was founded as a great school for the study of Roman law, to be followed by the University of Padua, and other Italian law schools. So long as Germany formed part of the great kingdom of the Franks, it was, of course, subject to the same legal system, but after the Treaty of Verdun, when the two kingdoms became separated, there was a change, and our knowledge of the administration of law in Germany is derived principally from the *Sachen-Spiegel*, while it was apparently unwritten law which prevailed among the great feudatories. In the eleventh century, the relation of Germany with Italy was of the closest. Through the influence of the Italian Universities the study of Roman law began to be earnestly pursued in Germany, and from that time it prevailed throughout the Empire. The *Pandects of Justinian* became the textbook for all legal studies. England and the great Scandinavian kingdoms of the North have, however, preserved and developed their Teutonic codes. Still, even here, as in the English Court of Chancery, there are evident traces of Roman influence, while in Scottish law, there is

a strong admixture of the Roman, which has come in from France.

The third great bond of union which I mentioned between ancient and mediæval civilization is the municipal system. As this, however, is a subject which requires a larger discussion, we shall leave the consideration of it till we come to speak of the Roman Municipia in a somewhat different connection.

It is quite evident from the rapid sketch of the connection between Roman and mediæval civilization, which I have here presented, that it was the combination of Gothic life and vigour with the elements of Roman civilization which gave to Europe a common culture and theology, common science and institutions, a common literature, as well as a common art and architecture.

## LECTURE II.

### CAUSES OF THE DECLINE OF THE EMPIRE.

There is no finer passage in Livy than that in which he represents the effects at Rome of the news of the battle of Cannae, and it is with an evident feeling of national pride he tells us that notwithstanding the losses inflicted on the Roman army, and the reported revolt of many of the allies, no one made mention of peace. Rome, under the republic, never seemed so great as when tried by adversity. Then all that was noble in the Roman character was brought out, and there was evinced a firmness and an energy which rose above every difficulty and carried her to ultimate victory. For a period of upwards of six centuries, Italy was not again violated by a foreign enemy, till she was invaded by Alaric and his Goths. Twice they besieged Rome, but were bought off; on a third occasion, however, they easily took the city, which they pillaged, carrying away untold treasure. The Rome of that day was not the Rome of the earlier period. It is hard to find a noble trait in the Rome of Honorius; all virtue, all honour and all energy would seem to have gone. There was very little effort made to oppose Alaric or afterwards to

retrieve the humiliation or the losses which Rome had suffered. She never really rose from that prostration. History would seem to teach us that it is well-nigh impossible to subdue a nation, which, however small, is yet healthy and vigorous. The causes of a state's overthrow are to be found in its internal decay, and in the loss of political and social virtue, rather than in the invasion of a foreign enemy. Greece, we may almost say Athens alone, baffled the innumerable hosts of the Persians, but at a later period fell before the small kingdom of Macedon; and Rome, that had resisted the disciplined veterans of Hannibal, and had herself subdued so many kingdoms, was yet unable to withstand the rude hordes of Alaric. No doubt, in either case, the immediate occasion of the collapse was the invasion by a foreign enemy, but the true cause is to be found in that internal weakness, which rendered the nation unable to resist the external pressure, and no account of the nation's fall can be satisfactory which does not consider both these factors—the moral, social and political degradation of the people, quite as much as the invasion by a foreign enemy. To say, however, as Mr. Hodgkin does,<sup>1</sup> that a nation must have ful-

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1. Hodgkin's *Italy and Her Invaders*, vol. II, p. 345. "The Roman Empire of the West fell because it had completed its work and the time had come to cut it down, and to cumber the ground no longer."

filled her day, and accomplished her work, is a very easy, but a vague and most unsatisfactory way of accounting for a nation's fall. I, too, firmly believe in "God in History," but I also believe that man is a most important factor in carrying out his own destiny, whether as an individual or in his national relations. The weakness of Rome in the fourth century was not a sudden weakness. It was the result of causes which had been long in operation, which had begun under the Republic, or even earlier, and had grown with the Empire. Throughout the whole period of her history, Rome had been wanting in that unity and sympathy between the different classes of society on which the real strength of a state depends. The early constitution of Rome was based on the patriarchal government of the patrician families. These families maintained their exclusiveness, secured the principal offices even after these had been thrown open to the plebs, and with a rising capitalist class possessed the greater part of the landed property, in spite of the repeated agrarian laws. It was this inequality of social ranks, and the separation of classes with essentially different interests, together with the inequality of the rights of suffrage that brought about those social wars, which under Marius and Cinna and Drusus and Sulla saddened the later years of the Republic.

These wars, and the proscriptions that followed, only still further embittered the rancour of parties, and necessitated a change in the form of government. The constitution of the Republic wanted elasticity. It was too narrow and too limited in its character. It was not successful in the government of Rome even as a country town on the Tiber, and now that she had extended her conquests, and was called to rule with something of that vigour which had led her to victory, and with wisdom adapted to her more lofty position, the Republic proved utterly inadequate to the task. She could not bring herself to dispense with those constitutional forms which were only fitted for a limited territory, and the Empire with its stronger grasp of power, and its wider scope, would seem to have been a necessity. The establishment of the Empire may have been full of hope, and notwithstanding the action of Brutus and his fellow-conspirators, we may well believe that there were many who looked upon it as the only solution of a very difficult problem. Cicero in his *Republic* points out the advantages of a limited monarchy. The book appeared in 51 B.C., two years before Cæsar had been for the first time appointed Dictator, and though it had been written in favour of Pompey, its arguments were equally forcible in favour of Cæsar, and may have had some influence in deciding his course. Two years later, in

49 B.C., when Cæsar was in Spain, two letters were addressed to him, said to have been written by Sallust. These letters are an earnest appeal to Cæsar to seize the government and to save Rome, and deliver her from the rule of the Oligarchs. If we may accept these writings as expressing the views of an important party in the state, the popular party as distinguished from the Oligarchs, it would appear that a change in the direction of a military monarchy was inevitable. But there was, unfortunately, little to justify the hopes that may have been entertained. It is very doubtful if, under the circumstances, such a Utopia as had been described by Cicero could possibly have been realized. Had the Emperors been able to remodel the existing form of the constitution, or to create new forms with fuller and freer representation of the people, their government might have been an inestimable benefit, but the elements with which they had to deal were difficult to control or direct, while they themselves had no adequate sense of the importance of their office, or of the responsibilities and true dignity of their position. The evils which had shown themselves in the later days of the Republic continued to exist in even an aggravated form, while to these were added other evils inseparable from a military despotism, such as the Empire really was. It may have been the consequence of the unsettled and degraded condition

of affairs, but it was not less a great evil that the men who were raised to power were for the most part without principle. From Julius Cæsar to Marcus Aurelius, it must be admitted that the emperors were with few exceptions men of ability, who exercised their authority, if not always wisely, at least with considerable power and energy. But from Commodus to Constantine, there was an almost unbroken succession of men without wisdom, without honour, without firmness, who gave loose rein to their worst passions. They were elevated to the purple by the force of circumstances, and each lived long enough to add some new heritage of evil to the evils which already degraded Rome. The comparatively prosperous reign of Alexander Severus is an oasis in the desert of iniquity, yet it is an oasis not without its sombre shades; his virtues were not of the strong or masculine kind, he was influenced in his government by caprice rather than by definite purpose, and he was not able to control the Pretorian guards, to whose cruelty and want of discipline he fell a victim, as his faithful counsellor and trusty general Ulpian had fallen a short time before. In 240 Diocletian was elected Emperor. He was a weak man, wholly unfitted to grapple with the difficulties in which the state then was. The Empire had grown unwieldy, and Diocletian deemed it necessary to associate with himself Maximian with

the title of Augustus, and Galerius and Constantine with the lesser dignity of Cæsar. But Constantine, who succeeded, reunited the dismembered empire, and concentrated all authority in his own person. He was undoubtedly a ruler of great ability, yet by the change of the seat of government from Rome to Constantinople he took a step which led to the permanent dismemberment of the Empire. It is difficult to discern the exact motives which induced him to make the change, but we are unwilling to believe that they were merely personal. It is far more probable that he had in view the strengthening and the consolidation of the Empire. Any danger which had as yet threatened had come from the East. Parthia had never been subdued, and always required the most attentive watchfulness. But Rome had made it a matter of the utmost importance to extend her language and her civilization over all the countries that she conquered, and Gaul, Spain, and Africa in the West became identified with her in language, in laws, and in the general tone of their civilization. In the East, however, it was different, and Rome was not able to substitute her language and her civilization for the more euphonious language and higher civilization of Greece. But Greece had given her language and her civilization not only to her own colonies but also to the countries which she had conquered. Asia, as far as the

Euphrates, was covered with Greek cities, and the long reign of the Ptolemies had virtually made Egypt almost as Greek as Greece herself. If a line were drawn from the head of the Adriatic Gulf across to Africa near Cyrene, it would, with tolerable accuracy, mark the distinction of two civilizations, the elements of which were essentially different and even opposing<sup>1</sup>. The civilization of Rome was peculiarly practical, and with her language she gave her laws to the Western world. The Greek, on the other hand, was distinctively artistic and speculative, and though the old schools of Philosophy had after the Macedonian conquest lost very much of their influence, yet of late years the Neo-Platonism and Gnosticism of the Alexandrian schools had infused a new life into the torpid elements of paganism. The existence of the two languages and the two civilizations prevented any complete fusion of the Eastern with the Western portion of the Empire, and Christianity rather afforded the occasion for the trenchant accentuation of their incompatibility. In that interesting book, *L'Eglise et l'Empire au 4me Siecle*, M. de Broglie has drawn a pleasing picture of the rising church giving unity to the dismembered empire. I confess that it is difficult to look at the matter from the same point of view as M. de

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1. Sheppard's. *The Fall of Rome, and rise of New Nationalities.* p. 36.

Broglie, for it seems to me that the same differences, which distinguished the civilization of the Eastern from the Western portion of the Empire, have since kept apart in even a more marked degree the Greek and Roman churches. But it seems more reasonable to believe that in the removal of the seat of the Empire to the East, Constantine had in view the blending of the two civilizations, while by the occupation of Byzantium he might consider that he was closing the gates of Europe against the Eastern invaders, and at the same time founding a home where Christianity might establish herself free from the associations, the pagan traditions, and the vices of Rome. But whatever may have been Constantine's motive, I feel convinced that no greater political mistake was ever committed. The two civilizations continued to retain their distinctive features, and these distinctions were certainly not softened by the jealousies which sprang up between the rival capitals as well as between the rival churches; while the removal of the seat of Empire from Rome gave the opportunity for the development of another power, which would one day assume an authority greater than that exercised by him who spoke from his throne by the shores of the Bosphorus. The change of the seat of Empire effected by Constantine was not attended by any improvement in the administration of the

state. The government of Rome under the Empire was a military despotism or rather a military anarchy of the worst kind. It had come to be denuded of any popular or representative element. The Comitia no longer existed, and the Senate so long as it continued was wholly guided by the will of the Emperor, who as master of the legions, held the sword, and was not likely to share his power with any other. The imperial system closed every avenue to an active, practical life; political spies and private accusers, who in the later days of the Republic had found occupation, were now further encouraged and increased, and as they were rewarded by a share of the property which was confiscated, they menaced every leading politician and every wealthy man. In this way, the members of the old aristocracy were gradually depressed, ruined, or driven by the dangers of public life into the indulgence of private orgies, while on the other hand means were taken to conciliate the populace by free distributions of corn and by public games. It seems strange that Mr. Congreve<sup>1</sup> should regard the Empire as the period of Rome's manhood, and of all that moral, intellectual and physical vigour which the analogy implies, or that Mr. Hodgkin<sup>2</sup> cannot look on

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1. Congreve's *Roman Empire of the West*, p. 6, et passim.

2. Hodgkin's *Italy and Her Invaders*. Vol. II, p. 36.

the empire as anything else than the preservation of the state.

It is true that Julius Cæsar and Augustus did exercise a firm government, and for a time stayed the process of degeneration which had begun under the Republic, and introduced measures intended to improve the condition of the Senate; yet as these measures were based on principles of arbitrary power, they ultimately destroyed every form of representative government, and inaugurated a system which could not but prove fatal to the best interests of the state, while in the exercise of their arbitrary power the emperors, certainly the later emperors, were guided neither by religion, nor moral sentiment, nor even by national pride.

But besides the system of government, there were other evils which were weakening the empire. Chief among these were the system of slavery and the free distribution of corn with the public games.

Slavery is not an accident of paganism, it is inseparable from it. The mode of conquest and the entire subjugation of a conquered people placed in the hands of the conquerors vast numbers of both sexes, over whom the rights of war gave them entire control. The very extensive conquests of Rome gave her an enormous number of slaves, and it is calculated that at the close of the Republic the free population of the penin-

sula was between six and seven millions, while the slaves amounted to twice that number. They were employed in every capacity, and some citizens are said to have possessed ten and even twenty thousand of them. But slavery in ancient times differed in many respects from modern slavery, such as existed in the southern states of the neighboring Republic. Here a strongly-marked ethnological distinction separated the servile from the dominant race, whereas in ancient times the slave differed neither in colour, in education, nor perhaps in bearing from the master; the fortunes of war had alone drawn the distinction, and the slave was as fitted as his master for engaging in all the varied avocations of life. Under these circumstances it was natural that every industrial pursuit should be given over to slaves; to them were confided even the most private and the most important arrangements of the family, including the education of the youth of both sexes. Under the Republic and still more under the Empire a vicious celibacy became habitual, and Greek slaves of great beauty or Alexandrian slaves skilled in all the arts of pampering sensuality gratified the lusts of their libertine masters. A healthy social or domestic life was become impossible. Slavery was a hot-bed of vice without a single seed-plot of virtue, and immorality, unrestrained by religion or by law, pervaded every part of Roman

society. Commerce and the industrial arts are conducive to morality, for business cannot be carried on without integrity, earnestness, and mutual confidence among the parties engaged. It is one of the first principles of a commercial life that every man aspiring to succeed must adhere to the strictest morality in all his dealings. The moral habits thus exercised cannot fail to influence beneficially all relations of life, both public and private, and beget generally a spirit of integrity, fair play, impartiality and freedom from prejudice and passion. And these excellent qualities will prevail in the lower spheres of industrial activity quite as much as in the higher. The tradesman and the artisan must be honest and industrious; must also exercise caution and forethought as well as self-restraint and thrift. The influence of these habits will extend throughout the whole range of his life. For instance, he will not marry till he has acquired a competence or secured an income suited to his possible wants as the head of a household. Under slavery, as it existed in the Empire, there was no room for the growth of those virtues, any more than for that vigorous personal initiative and individual enterprise which are stimulated throughout all classes of society by the system of free labour. There was no opportunity for a healthy, commercial life; the free artisan was forced out of employment, and only in rare

instances could the slave be expected to take an interest in concerns from which for the most part he derived no benefit, and where the exercise of thrift and forethought had ceased to be a virtue. But the agricultural interests suffered quite as much as the commercial. A happy, healthy and patriotic peasantry must always constitute a nation's strength; it forms a strong and vigorous race which contributes largely to the national wealth, and affords the best material for an army; but the existence of a morally and physically healthy agricultural class was wholly incompatible with slavery. Throughout the Empire every avenue of industry was closed against free labour, and though agrarian laws were passed from time to time, they brought no relief to the free agriculturalist. These laws prohibited the accumulating of large holdings, and required the employment of free labour proportioned to the number of slaves; but they were dexterously avoided, and large holdings worked exclusively by slave labour continued to increase. The smaller peasant proprietors glided hopelessly into debt, and found themselves excluded by slave labour from the position of even hired cultivators. The peasantry naturally drifted to the towns and engaged in pursuits which had anything but a refining influence. Many became gladiators and others political spies. The greater majority however sank into the mass of the

poor, who were supported in their poverty and vicious idleness by the giving of corn, which was distributed liberally and even lavishly, and without any respect for desert. The public amusements were freely thrown open to the populace, and this tended very much to foster idle habits, and to encourage a recklessness of human life. The result was a rapid decrease of the population, for in a degraded poverty there was no inducement to marriage, and vice in its very worst features everywhere prevailed. All public spirit in the general population was completely destroyed; liberty was cheerfully bartered for games and corn, and by these the most vicious tyrant could always secure the support of the populace. The producing power of the land also suffered most serious diminution. Italy became dependent upon Egypt and Sicily and other provinces, and the supply was exacted in the form of an exorbitant tribute. If adverse winds or any other cause interrupted the convoy of corn ships, this created a panic in the capital, and led to bread riots, while the magnitude of the tribute exacted in this form served to alienate the provinces. But the destruction of the agricultural class very seriously affected the military life; there was no feeling of patriotism such as had existed in the earlier Republic and to which it might be possible to appeal. The civil wars had destroyed the old military tradi-

tions; oriental luxury and voluptuousness had sapped the national vigour; and when the imperial power fell into the hands of incompetent rulers, the soldiery, recruited from the lowest rabble of the streets, or still oftener from the tribes that lay without the limits of the Empire, often urged their leaders to revolt and assume the imperial purple, so that the empire was reduced to a state of military anarchy.

Another evil, which seriously affected the character of the Romans, and marked the decline of the Empire, was the gladiatorial games. These present a feature in Roman society which it is well nigh impossible to imagine. Like so many of the Greek games, they had been connected with religious observances. The victims had been offered at the grave as human sacrifices to appease the Manes of the dead, originally only at the obsequies of men. Cæsar was the first who extended these barbarous honours to females, and the blood of gladiators was shed at the tomb of his daughter Julia. These games, however, soon ceased to be restricted to burial places, for they were observed on very different occasions. Soon schools of gladiators existed in all the cities of Italy and the provinces, consisting chiefly of slaves and criminals, but also of free men, who often hired themselves in this service for a term of years. A complete recklessness of human life was engendered both

among combatants and spectators; all sympathy with human suffering was destroyed, and any excessive refinement of barbarity elicited applause from the multitude. At the triumph of Aurelian eight hundred pairs of gladiators fought, and five thousand during the games of Trajan. Nothing can be more revolting than the narrative of these games by authors who evidently saw nothing cruel or immoral in them. The Colosseum at Rome, the amphitheatre at Pompeii, or the provincial amphitheatres at Arles or at Treves still remain to give some idea of the large number of spectators who were present at these games, and of the influence which they must have had on society throughout the Empire. It was natural that Christianity should soon show her opposition to these scenes of cruelty, and Constantine issued an edict against them. But it was difficult to suppress so favourite a pastime, and they continued during the whole of the fourth century.

## LECTURE III.

### THE MUNICIPAL SYSTEM UNDER THE EMPIRE.

In my last lecture, I presented to you some of the causes which tended to lower the moral condition of Roman society, and to weaken the elements of its political life. I spoke of the different features of Greek and Roman civilization which, after the separation of the Eastern and Western Empire, destroyed any feeling of unity that might have existed, showing that in the Greek and Roman churches these distinctive features led to developments which ultimately became antagonistic. I also considered, though in a very cursory manner, the results of the imperial system, a form of arbitrary government which closed every avenue of independent political life, and which, seeking its support from the lower classes of society, pandered to their vicious and immoral tastes. I further depicted the evils of slavery, which destroyed all free industrial life, whether in agriculture or commerce, while at the same time it changed, and very much weakened the character of the Roman army, which was now recruited from the rabble of the

streets, or from the tribes which lay outside the Empire, neither of whom were at all likely to be actuated by feelings of patriotism, or fired by ambition to rival the glorious deeds of the old Roman heroes. I now purpose to consider the condition of the Roman municipia. The history of the municipia throughout the Empire forms a most important subject of study, for without an understanding of their condition in the several periods of Roman history, it is impossible to form a correct idea of the social, political and economic state of the people. We have not very ample materials for original research, though much may be gathered from the writings of Cicero and Pliny, and from occasional allusions in the histories of Livy and Tacitus. Our chief sources, however, are the *Lex Julia Municipalis* and the *Lex Rubria*, and for the later history of the municipia the Theodosian code, a large part of which is devoted to the regulating of municipal administration. The subject has received much attention from late writers, chiefly on account of its close connection with the history of the municipalities of modern Europe, particularly of France, and we have a series of writers from Raynouard and Roth, Savigny and Hegel, to Madvig, Mommsen, and Marquardt, whose last work is at once full and accurate. The organization of a large political aggregate, and the due administration of

its government was a problem very imperfectly understood by the ancients. We know too little of the great Asiatic kingdoms or of Egypt to form any sufficient idea of their constitution or administration. They were undoubtedly military despotisms wherein the outlying districts had no connection, no union of sympathy or interests with the central power, the royal will being executed in the several districts by viceroys like the Persian Satraps, without any other organs of local self-government or any representatives in the central administration. A government of such a character must be wanting in consistency, and the several parts can be held together only so long as the central authority is sufficiently strong to overcome all opposition in the provinces. Greece, notwithstanding her advanced culture and her political speculation, as presented in the Republic of Plato and the Politics of Aristotle, never rose to the condition of a united state. Very limited in area, she was divided into small republics or monarchies, or rather oligarchies, separated from each other by antipathies, jealousies and rivalries, ever and again breaking out into bitter contests. The fact that the same word *polis* was used to express the idea at once of a state and a city is significant of the limited conception entertained by the Greeks of the state, which to them was simply a city with a small extent of territory lying

outside. Now we find the very same thing in the history of the Roman municipia. Here, too, the term used for the city also meant a state, with the still further signification of citizenship.

From a small town on the Tiber with a limited municipal constitution, Rome grew to be the head of a great empire. She extended her conquests over the greater part of the then known world; numerous and large towns became subject to her; and to these she gave a municipal constitution very similar to her own. They remained subject but isolated communities, having each its own municipal constitution, but no immediate connection with Rome herself, and no part in the political administration of the Empire, though contributing largely to the treasury of the State. Their interests were by no means the same as those of the central government, and their sympathies and associations often pointed in quite a different direction<sup>1</sup>. A state which thus lacked internal unity and cohesion could only be kept together by military control, or by dread of a common danger. This was always a weakness in the Roman state, and contributed largely to her ultimate overthrow. At first the rights of Roman citizenship were confined to the

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1. Machiavelli thinks that the Roman colonies served to consolidate the Empire, but the fact that they had no voice in the central administration and that the interests of the provinces were very often antagonistic to Rome's, ought at least to modify very considerably this view.

free inhabitants of the city and the immediately surrounding district, the *Ager Romanus*. But after the conquest of Latium, and subsequently of the Samnites and Sabines, it became necessary to extend to them some part in the political administration, and to grant them privileges to a greater or to a less extent. As the process of subjugation went on, which finally included the whole of Italy, it became a general practice to transfer a portion of the conquered people to Rome, while their place was taken by colonists sent out from the city. The cities of these districts, partially colonized, were in some measure incorporated with Rome though with limited privileges. After the second Punic war, when several of such subject towns had joined Hannibal, they were deprived, as in the case of Capua, of any privileges which they had previously enjoyed, while those that remained faithful to their allegiance were rewarded by an extension of their privileges. After the social wars, the *coloniae* of Italy and of Cisalpine Gaul suffered a severe diminution of their rights, but Cæsar by the *Lex Julia Municipalis* and the *Lex Rubria* rectified to some extent these grievances and renewed their privileges<sup>1</sup>. The Government of the *coloniæ* and of the *municipia* was modelled on the government of Rome. Their *curiæ* con-

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1. Bruns, *Fontes Juris Romani Antiqui*, Edit. Mommsen.

formed to the Roman Senate, and were composed of from fifty to a hundred decurions or curiales. The people had also their assemblies similar to the *comitia tributa* at Rome, and for a time the magistrates, as well as the representatives to the curia were elected in these popular assemblies. What, however, were the real powers of these *comitia*, it is very difficult to determine or how long they continued to exercise their powers. Guizot thinks that the municipia sent representatives to Rome to take part in the central administration,<sup>1</sup> but this is undoubtedly a mistake. If that was ever regarded as a right of their *suffragium*, it was certainly not taken advantage of. Suetonius, however, does mention that votes on matters of state interest were, in the time of Augustus, taken in the curia and forwarded to Rome.<sup>2</sup> This seems, however, to have been restricted to the decurions, and was not an exercise of popular power.

The chief magistrates of a *colonia* or a *municipium* were the *duumviri* or the *quattuorviri*,<sup>3</sup>

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1. Guizot *Essais Sur l'histoire de France*, p. 9, "Les hommes principaux des municipes s'étaient rendus à Rome pour y participer, soit dans les comices, soit par les grands fonctions publiques au gouvernement du monde."

2. Suetonius *Vita Augusti*. Chap. XLVI.

3. Were the *quattuorviri* Aediles? The *duumviri* and the *quattuorviri* are found mentioned in the same *municipium* with different duties, those of the *quattuorviri* being within the *municipium* itself; those of the *duumviri* extended beyond it. *Lex. Julia Municipalis* Lt. 50. Vid. article by I. Jung in *Historische Zeitschrift* 1891, n. f. B. 31. *Das romanische Municipalwesen in den Provinzen*.

whose functions may be compared with those of the Consuls at Rome. Their principal duties were the administration of justice (*Jure dicendo*). They were at first elected by the comitia, but as at Rome, so later in the municipia, the comitia lost their power, and the magistrates were elected in the curia. But only decurions could be chosen to the offices.<sup>1</sup> Rome had suffered very much under the imperial system. Not only had the Comitia Tributa been abolished, but the Senate had been reduced to entire subjection to the imperial will. The municipia of the provinces, however, were still allowed to manage their own affairs, and continued to enjoy privileges which Rome herself had lost. Indeed, by some of the emperors edicts were issued conferring increased powers on the municipia, and special rights on the decurions, so that the period between Cæsar and Constantine may be regarded as the most prosperous in the history of the municipia. We need not suppose, however, that this prosperity was without exception. Marquardt refers to a letter of Pliny, from which it appears that the municipia of Baetica, a large province of Spain, had cause of complaint which apparently called forth the *lex Malacitana* and the *lex Salpensana*.<sup>2</sup> But the prosperity was

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1. Is, qui non sit decurio, duumvirato vel aliis honoribus fungi non potest, quia decurionum honoribus plebei fungi prohibentur. Theodosian Code.

2. Brun's *Fontes Juris antiqui* pp. 136-141.

very general, and the middle classes as represented in the municipia were fostered and encouraged.

The municipal revenues were at that time sufficient for all demands, imperial and local, and buildings of the period still remain to testify to the prosperous condition of the municipia, and the general circulation of money.<sup>1</sup> At length in the end of the third century, the evils of the imperial system began to be felt with some severity. Since Septimius Severus, the imperial power had become enfeebled, and had fallen into weak hands, and this at the very time when the dangers and the expenses of the Empire were very much increased. It is the peculiar feature of despotism that its exigencies increase in proportion as the means for meeting those exigencies decrease; the more it becomes enfeebled, the more it must exact. The despotism of the Roman emperors had three great dangers to fear, (1) From the barbarians, who in the East as well as in the West were already threatening the Empire. (2) From the lower classes, who had become so dangerous, and whom it was necessary to feed and amuse, and (3) from the army. The army was the only defence against the

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1. It may be well to remark that when the rights of citizenship were extended under Caracalla, this virtually broke down the distinction between the *coloniæ* and the *municipia* as well as the towns which enjoyed fewer privileges, and placed all on the same level.

other two dangers, but was itself more dangerous than either. The Praetorian guards had acquired a power which they exercised in the unseating of one emperor and the elevation of another; they had thrown off all restraint, and the fate of the Empire was for a time entirely in their hands. This dangerous state of affairs entailed on the imperial treasury immense expenses, and it became necessary to make large demands on the provinces, and these demands were rendered heavier by the form in which they were exacted. Mr. Hodgkin does not see why a revenue of twenty or even thirty millions of pounds should be very burdensome to ninety millions of people,<sup>1</sup> but he does not duly consider the form in which the taxes were levied. The revenue was farmed, and the tax gatherers made exorbitant exactions. It is true that laws were passed for the purpose of restricting the exactions,<sup>2</sup> and censors were appointed to superintend the collecting of the taxes. But notwithstanding these precautions the publicans continued to abuse their power. Livy states, in narrating the arrangement with the Macedonians and Illyrians, that the Roman commissioners expressed their willingness to do away with the

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1. Hodgkin's *Italy and Her Invaders*. Vol. II, p. 620. Though Mr. Hodgkin afterwards alludes to the form of the exactions.

2. *Leges Censorae*.

farming of the Macedonian mines, and of the public lands, because, as they admit, where such persons are employed, they are not always restrained by law, nor do they respect the rights of allies. Even so early as the Hannibalic war, the name of publican was associated with fraud,<sup>1</sup> and Livy says of Marcus Postumius Pyrgensis, "This man was a farmer of the revenue, and for many years had not in the whole state any equal in fraud and avarice, except Lucius Pomponius Veientanus."<sup>2</sup> The *Lex Julia Municipalis* was partly designed to remedy this evil, especially as it existed in Cisalpine Gaul. Sometimes, the curia of a municipium was required to furnish a certain amount to the imperial treasury, and when the curia failed to furnish the amount required, the property of the curia was taken, and when this was insufficient the individual decurions were held personally responsible. The position of a decurion was hereditary, and it was impossible to lay down what had become an uncoveted dignity<sup>3</sup> for the office once associated with honour and much sought after was now as earnestly shunned. But neither the decurion nor his sons could leave the municipium or enter

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1. Livy XLV, 18; *Ubi Publicanus esset, ibi aut jus publicum vanum, aut libertatem sociis nullam esse.*

2. Livy XXV, 3. *Publicanus erat Postumius, qui multis annis parem fraude avaritiaque neminem in civitate habuerat praeter L. Pomponium Veientanum.*

3. *Codex Theod lib. VIII, tit. 4.*

the army<sup>1</sup> or accept office in the imperial household. There was no exemption from the liabilities of a decurion; it was natural therefore that their number should continue to diminish. Any one holding twenty-five acres of land was after this enrolled in the order, and at last so low did the office fall that Jews, heretics and even criminals were made decurions. In this way the upper and middle classes of Italian and provincial society were completely destroyed, being deprived of any semblance of liberty. There was, however, one avenue of escape from these oppressions still open for a short time longer. The Christian church had grown up in the centre of this social and political life of the empire; it had assumed a definite organization, and it was the only association which promised to its votaries the happiness of a quiet, spiritual life. Its teaching, appealing as it did to the imagination, as well as satisfying the intellect, exercised an attractive influence over the strongest minds, and the moral needs, the misfortune and oppression of the time, only rendered its principles and its promises dearer and more consoling. Mother

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1. Cod. Theod. Lib. XII, tit. III. "Quum decuriones decurionum filii de quibus geniti ad diversas milites confugunt, jubemus eos, in quibusque officiis militantes, exemptos militia restitui curiae.

M. Violet in his *Histoire des institutions politiques et administratives en France*, vol. II and Marquardt et Mommsen in their *Römische Alterthümer* have collected a large number of examples.

Church, even then Mother Church, opened her doors to receive the poor and oppressed decurion. She became everything to him, and in return for her teaching, her care and protection, the hopes she inspired, the immunities she offered, he gave her his thoughts and affections, he devoted to her his abilities and what remained of his worldly goods. For a time, and especially under Constantine, the central power encouraged the efforts of the Christian church, and even deprived the municipal magistrates of a portion of their authority in order to invest the clergy with it. The clergy were exempted from municipal or curial obligations, and this induced a large number of decurions to take church orders. Indeed so many took refuge in the church, principally, it would seem, in the monasteries, that after Constantine the emperors, and especially Julian, issued edicts prohibiting them from entering the ranks of the clergy, either absolutely, or at the price of forfeiting their entire possessions;<sup>1</sup> and even went so far as to compel such as already had become clerics to withdraw from the sacred profession and reassume their curial duties and responsibilities. It must, however, be said for Julian that, while he sought to close the clerical life to the decurions, he did what he

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1. Codex Theod lib. XVI, tit. 1, 2, 3. Siqui de curialibus ad ecclesiam confugissent, omni scirent patrimonia curiae esse cedendum.

could to alleviate the oppressions to which they had been so long subjected.

Such was the state of affairs in the Empire after the third century. The imperial system had stifled all individual opinion, and all interest in the administration. Slavery had destroyed the free agricultural and industrial classes, while the upper and middle classes were ruined by the oppressive municipal system. It was in this state of material ruin and moral inanity that the barbarians when they invaded the Empire found its inhabitants. A change of masters might possibly bring relief. It could not aggravate the condition of affairs. This is frequently alluded to by contemporaries as Salvian, Orosius, Mamertinus and others.<sup>1</sup>

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1. At multi eorum. et non obscuris natalibus editi, ad hostes fugiant ne persecutionis publicae afflictione moriantur. Salvian V, 21.

Leviore his hostes quam exactores sunt, et res ipsae indicant; ad hostes fugiunt ut vim exactionis evadant. Sal. V, 28.

Quidem Romani qui malint inter barbaros pauperam libertatem quam inter Romanos tributariam sollicitudinem. Orosius VII, 41.

At jam Barbari desidarentur ut praeoptaretur a miseris fortuna captorum. Mamertinus Vol. III, p. 1506.

## LECTURE IV.<sup>1</sup>

### THE INFLUENCE OF EDUCATION AND RELIGION.

The history of the municipia as presented in the last lecture shows the general disintegration of the middle classes of Roman society, and the breaking up of whatever sympathy or community of interests may have, at any time, connected the provinces with the centre of the Empire. The division of the Empire had indeed brought little or no change, for the Eastern emperors carried out the line of conduct inaugurated at Rome, and the extension of citizenship by Caracalla, though it reduced all the towns to the same level, and broke down the distinction between *coloniae* and *municipia* and *praefecturae*, brought no relief to the oppressed *decurions*. The empire was rapidly sinking to her ruin, and Rome, during her long history, had offered no remedy for these constantly growing evils. We might reasonably suppose that education, religion, law, or philosophy might have exercised

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1. For much in this lecture, I am indebted to Gibbon, to Lecky's *History of European Morals*, and to Dollinger's *The Gentile and the Jew in the courts of the Temple of Christ*.

some remedial influence, but none of them had received the degree of attention required to make them effective. The sphere of education in the Empire was strangely limited, and there was a want of originality in Roman literature and art. Rome had no theoretical science, and no original types of art or architecture. She had no Phidias or Praxiteles, no Parthenon or Theseum, though she had her great public works, her amphitheatres, her baths, her triumphal arches, her aqueducts and her great military roads; her art was deficient in the imaginative and the religious elements, which are so essential to the true nature of art. Her literature was equally defective. She certainly excelled in history and in rhetoric, but in her poetry we miss the mythological realism which forms such an attraction in Hesiod and Homer, and in the tragedies of Aeschylus, and Sophocles, and in a less degree in Euripides, perhaps also in Pindar, and for which the pious poetry of Virgil and the indifferentism of Horace are weak substitutes.

It was very probably the want of an early native literature which retarded education at Rome. But no doubt that jealousy which existed between the classes of society led the patricians to restrict, as far as possible, any participation in the advantages of education. The aristocratic families employed tutors, generally slaves, and Pliny tells us that the sons of a good

family learnt only two things, war and politics, to the entire neglect of literature and the fine arts. Cicero deeply regretted that even in his day there was no system of education, no public schools, and no laws to regulate education. May not this in some degree account for the fact that so few of the middle or of the lower classes took any active part in politics, and that they were, especially in the later years of the Republic, so easily influenced by demagogues? With Augustus, however, the establishment of schools became a subject of serious legislation, and the matter also received much attention under Trajan, Marcus Aurelius and Diocletian. But it was Vespasian who first took it under government supervision, and paid regular salaries to teachers out of the public funds. Quintilian was one of those who enjoyed the imperial favour, and for twenty years he taught rhetoric at Rome, and Pliny with Tacitus, if not also Martial, were among his pupils. But it was not till the beginning of the fourth century that the system of public instruction received full organization, when it may be said to have been taken under the aegis of Christianity. At that time schools were established in all the municipia throughout the Empire, and the teachers in these schools were appointed by the emperor, but more frequently by the curia of the municipium, and paid out of the municipal funds. In 362,

Julian proclaimed by an edict that inasmuch as he was unable to attend to all the matters which required his attention, the teachers should be appointed by the curiae, he however retaining a veto,<sup>1</sup> and this practice seems to have been continued so long as the Empire lasted. In 425, Theodosius II founded the great school or university of Constantinople, which became the most important in the Empire. It counted thirty-one professors, twenty of whom gave instruction in grammar, ten Greek and ten Latin, eight taught rhetoric, five Greek, three Latin, two law, and only one philosophy. Grammar was apparently a very wide subject, and included not only the principles of grammar, but of criticism as well, especially of the poets. It also comprised in many instances the study of the sciences as they were understood at the time, including astrology. Medicine would seem to have found no place in this course, unless it were included under the comprehensive head of grammar, and perhaps associated with astrology. But it is somewhat strange that of the thirty-one chairs only one was assigned to philosophy, a proof of the little interest which was taken in philosophy in the course of Roman education. It was usual to give teachers certain privileges, such as the freedom of the city, and exemption from municipal

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1. He excluded Christians from being employed as teachers. Gibbon, ch. XXXIII.

taxes, but strangely enough the teachers of philosophy were not included in the list of those to whom such privileges were granted. Within the limits of Greek civilization, Athens and Alexandria still had their schools of philosophy, but the sphere which was influenced by these schools was very limited. Perhaps it is more remarkable that the subject of law did not receive more attention, for it was not till the fourth century that the study arose into importance. Even then the sources of law were still the twelve tables, around which had accumulated the decisions of the comitia, the decrees of the senate, the edicts of the magistrates, the constitutions of the emperors and unwritten practice. It was not till the fifth century that these were properly codified. There had been no scientific study of the law, unless we accept such individual efforts as were made by the Scaevolus, the Catos and Cicero, or at a later period by Ulpian, Modestinus, Papinian, Paulus and Gaius. There were even in the fifth century only three schools where the subject received special attention; in the two capitals of the Empire, and in Byretus. It was not till the close of the Western Empire that Roman law became the subject of much study, and rather in the East than in the West. Modern Europe has been largely indebted to Roman law as it came through the East, and as preserved in the codex and pandects of Justinian, or the code

of Theodosius II. The study of jurisprudence and the administration of law may exert a very beneficial influence on national morality, but we cannot discover that the morality of Roman society was improved by the manner in which justice was administered, or by the attention which was given to the study of jurisprudence. In fact the whole Roman education was too limited, and its standard too low to accomplish anything towards elevating the intellect, or the moral character of the Roman people. It did not in any way grapple with those evils which everywhere existed. It ignored those great moral questions which the human mind is forever asking. It did not touch the evils of slavery, and it did not elevate the moral sentiment above those cruel games of the amphitheatre, which spoke so loudly of the degraded and insensate character of Roman society. What I have said regarding Roman education in a large measure applies to both sexes. During the Republic boys and girls enjoyed the same advantages, and the children of a good family were all educated together under a private tutor, generally a slave, while the boys and girls of poorer families attended the same public school, where such schools were to be found. In the earlier period the Romans sought to develop the stronger and more masculine qualities in their women, and discouraged those accomplishments which at a later period

were regarded as necessary in female education, such as music, the fine arts, calisthenics, including dancing. At no time in the history of Greece was the female character held so high, or so carefully guarded as it was at Rome. The participation of women in the sacred services of religion, and the existence of special sacred female colleges raised the standard of the female character. But in time the growing spirit of scepticism, the increasing carelessness in regard to the observance of religious rites, the influence of Greek customs, and the prevalence of slavery destroyed the power of those safe-guards which had long preserved the high character of the Roman women. While the education of boys improved under the Empire, it is feared that female education retrograded. Too much attention was now paid to those accomplishments which, however they may add to the attractiveness of woman, and fit her for taking her place in society, yet scarcely supply the want of mental discipline, and neither elevate her character nor render her more capable for the discharge of her duties.<sup>1</sup> Later writers, including the early Christian fathers, make constant allusions to the meretricious arts practised by women in

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1. See a very valuable article by Gaston Boissier in the *Revue des deux mondes*, Dec. 1st, 1873, entitled *Les Femmes à Rome, leur Education et leur Role dans la Société Romaine*.

the later Empire, yet undoubtedly there must have been many exceptions, for we read of women who found great pleasure in studying Plato and Seneca, and of Empresses who were associated with their husbands in administering the affairs of state. The Roman matron too never relinquished her share in the management of household affairs, and epitaphs still remain which commemorate the prudence, the honour, the benevolence, the industry and the chastity of some of those Roman matrons. But it was Christianity which elevated woman to her true position, and taught her that chastity is her truest ornament.

We have said that philosophy found little place among the Romans, yet the writings of Cicero, of Seneca, of Lucretius and Marcus Aurelius assure us that there were some who were attracted by it, and who sought to extend its influence. Each nation would seem to have certain phases of character and of thought, which from the first make themselves evident.

Brahminism seems the natural production of the Hindoo mind, and the germs of Greek philosophy are to be found in the earliest forms of mythological ideas which appear in Homer and Hesiod. But there is nothing in the countrymen of Marcus and Camillus which points to any elaboration of a system of philosophy. The Romans had no mythology such as the Greeks

possessed. They showed no desire to penetrate below the outward semblance of things. They were satisfied to take the world as they found it. They did not ask as to its origin, or how the human race arose, and only in the last century of the Republic was there the slightest tendency to philosophic thought. Greek influence was then beginning to be felt, and this influence may have been strengthened by the force of circumstances. The social wars with the ruin which resulted, it is more than probable, drove many from the plots and intrigues of public life to a life of contemplation. Such was apparently the case of Lucretius, who must have heard each day the contention of parties, and have seen the confusion and misery which they brought on his country. His desire to be delivered from the tyranny of powers which were only to evil may well have sent him to a life of retirement and contemplation, and led him to adopt the Epicurean philosophy, as a refuge from the intolerable evils of his age. The only schools which had any real influence on Roman thought and life were those of the Stoics, Epicureans and Sceptics. These three schools were the outgrowth of the individualistic philosophy which had arisen in opposition to the teaching of Plato and Aristotle. The character of Greek philosophy had in a large measure changed since those great masters of thought had

passed away. The somewhat restricted political life of Greece had in the long struggles of the Peloponnesian and Macedonian wars very much expanded, while the conquests of Alexander, by bringing it in touch with Oriental life and culture, influenced to a greater or less extent the development of Greek philosophy. Philosophy has naturally a double relation, its purely intellectual and its moral, or its metaphysical and its ethical side. In Plato's philosophy, these were inseparably blended, but we must remember how largely in Greek civilization the life of the individual was merged in the life of the state, and it was with this larger life that the system of Plato principally dealt. In Aristotle also while the metaphysical and the ethical were distinguished, they were not separated. But the expansion of Greek life and culture with the extension of knowledge gave rise to new questions. The Greek ideal state crumbled away, individual life assumed more importance, and the great question as to the conduct of life presented itself as the all-important problem for philosophy to solve. It was out of this new development of philosophy that the schools of the Sceptics, the Stoics and the Epicureans arose. It is foreign to my purpose to enter into a discussion of the ethical or philosophical views of these schools, nor do I feel competent for the task. They were essentially sceptical in

their character, and attacked the prevailing religious views, but they failed to present a system better adapted to the general wants and the higher desires of man. Among the Romans Epicurism found the readiest acceptance. It is presented in a pleasing form in the philosophic didactic poem of Lucretius, *De Rerum Natura*. But brought in contact with the prevailing evils and licentiousness of Roman life, Epicurism lost any virtue which it may have had, and in its perverted form seemed to afford an excuse for the looseness of Roman morals. Stoicism, however it may have been adapted to the sterner features of the earlier Roman character, found little acceptance among the men of the Empire. Seneca, Marcus Aurelius and Epictetus are its leading exponents among the Romans, but their teaching had little influence.

The eclecticism of Cicero scarcely survived its expounder. Cicero was perhaps the only philosophic writer who, however partially, may be regarded as an apologist for the prevailing form of religion. As occupying a sacred office, he may have considered himself as holding a brief for the imperiled deities, but the prevailing scepticism and the existing forms of philosophy had sounded the knell of the Roman religion. The reverence for the old deities, the awe which had enveloped their services, the respect which had given an attentive ear to their auguries and

oracles were of the past, and neither the existing religion nor philosophy, unless it were a degraded form of Epicurism, had any influence on the social or political life of the Empire.

Christianity as it was brought in contact with the civilization of the Empire did undoubtedly affect that civilization, but we must bear in mind that the influence which Christianity exerts is of a spiritual character, and that it achieves its results not in an ostensible manner, but by a quiet and yet forcible influence, and that it addresses itself to each individual heart and mind, always taking into consideration that man is a sentient and voluntary agent. But vice had so eaten into the heart of Roman life that it could only be extirpated by laying the axe to the root of the tree. In the form which it assumed in the Latin and Greek churches, we see Christianity robbed of very much of its original purity, and indeed, after the third century, we have a prevalence of vice equally scandalous with the vices of paganism, a civilization which certainly supplied little justification of the common hope of the regeneration of society by the Christian church. Christianity indeed found a more congenial field in the staid and sober character of the Teutonic invaders than among the gay and licentious Romans. Nevertheless Christianity did acquire considerable power in the Empire, and this is evident, if from nothing else than that the au-

thority which Julian exercised was not able to overthrow, scarcely to weaken its influence. The Christian doctrine of the nature and character of God, of the immortality of the soul, of the duties and responsibilities of man, the elevated morality of the sacred writings, their principles of brotherly love and of chastity, their representations of the dignity and beauty of holiness, their consolations and sympathies, their aspirations and hopes, these are truths through which the regeneration of the world is to be ultimately reached, but the process must of necessity be slow, for the system is a moral system and man is a free agent.

## LECTURE V.<sup>1</sup>

### THE CONDITION OF LANDED PROPERTY UNDER THE LATER EMPIRE.

In my last lecture, I remarked that neither education nor law, neither philosophy nor religion, had exercised much influence in staying those evils which were destroying the moral and physical life of the Romans, and which were so weakening the Empire that it was utterly unable to withstand the enemies that were already threatening its destruction. It may now be well to consider the condition of landed property under the Empire prior to the invasion of the Goths, as also the character of the population, and the nature of the culture of the rural districts. It is here that we generally meet with the most diverse classes of men, and where the rights and obligations of each class make themselves more evident. It was here too rather

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1. Books consulted for this lecture. Giraud's *Le Droit de la Propriété chez les Romains*, Eisendecker *Über die Entstehung, Entwicklung, und Ausbildung des Bürgerrechtes im alten Rom*. Die Etrusker, von Ottfried Müller, edit. Deecker, *Die Siedelung und Agrarwesen von August Meitzen*. V. I, ch. 4, *Vicende della proprietà in Italia* di Carlo Baude di Vesme T. 1, ch. I-IV. *Die Römische Staatsverwaltung* von Marquardt and Mommsen B. II, ch. 111.

than in the Forum, that the accords or the conflicts manifested themselves; and we may naturally expect that it would be here that we should find those threads, which may have connected the social and political life of Rome with the social and political life of the several countries of Europe in the Middle Ages; or discover in their earlier forms those principles, and those rights and obligations on which indeed the constitutions of ancient as well as of modern society very largely rest. There is perhaps nothing which touches so keenly the nerves of our social, political or economic life as the holding of property, and the laws which regulate it. In the earlier nomadic or even pastoral state, land was in common. Pasturage requires a large range, and it was impossible to divide land into separate or individual properties. Even after the tribes had begun to assume a more settled character, community of land continued for some time longer, and what is known as the Mark system was developed.<sup>1</sup> In this system, the land was the common possession of the tribe, and was divided to each freeman, the head of a family, no doubt in proportion to the number of the family. It consisted of portions of arable land,

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1. I regret that I must differ from such high authorities as Fustel de Coulange, Ashley, and Seebohm. Their opposition to Von Maurer has I think been satisfactorily answered by Meitzen.

meadows, pasture land and woodland, and a new division was made each spring. We may regard this as a transition stage when the tribe was passing from the nomadic or the pastoral to the more settled agricultural life. Naturally, however, in course of time, the constitution of the Mark system was changed so as to permit the mark man retaining his possession for a longer period. The settled agricultural life necessarily implied the more permanent division of property, and individual rights, which we can scarcely suppose to have been the immediate outcome of the nomadic condition. The right derived from culture, however simple that culture may have been, would naturally lead to permanent possession, and this permanency would further tend to extension of territory. Inheritance, intermarriage, exchange or usurpation would, sooner or later, affect a great change in the tenure of land. It was in this way that the bonds of social life grew, and that laws regulating the holding of property were established, and it was thus that the laws of property under the Roman constitution, and again in France under the feudal system, assumed their character and influence. Indeed the security and the morality of labour, as all public order, with the application of justice, rest very largely on the laws of property. It is not my purpose to follow the steps of this development, for at the time

when we become acquainted with the tenure of land among the Romans, it had become individual property. Under the kings, the holding of property was regarded as a sacred privilege, and any grant or any transfer of property was accomplished by a religious service. The form of consecration was borrowed from the Etruscans, who in their turn had derived it from the Greeks. The influence of the Etruscans on Roman civilization is well known, but the Etruscans had maintained a close relation with the Greeks of Magna Grecia, and had been led to adopt many Greek customs in relation to both constitutional government and religious services. Ottfried Müller in his "*Die Etrusker*" has treated this subject at some length. Livy mentions the peculiarly religious character of the Etruscans,<sup>1</sup> and Cicero<sup>2</sup> tells us that the Romans derived their knowledge of the Haruspices from them, and associates this knowledge with the apportioning of land, while Festus in his definition of terms, no doubt following Cicero, represents Tages, as the nephew of Jupiter, teaching the Etruscans the culture of the fields, and regard for the Haruspices, and we are further told that Jupiter was regarded as the God of Limits directing the measurement of land. The Etruscan agrimen-

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1. Livy, I V, ch. I. Gens itaque ante omnes alias eo magis debita religionibus.

2. Cicero De divinatione, I. II, ch. 23.

sor was a priest, and as the augur was accepted as the interpreter of the will of Jupiter, who was the God of Limits,<sup>1</sup> so an especial dignity attached to the agrimensor, and his right in his priestly office to consecrate the limits. An altar was erected on the limit, marked by the wand (lituus) of the agrimensor, and God was called on to witness. The remains of the victim that was offered were buried on the spot, where also the libation was poured out, and whoever encroached within the limits came under the curse of God.<sup>2</sup> The spot thus set apart for the religious service was called the templum,<sup>3</sup> which ancient writers derive from the Greek *Τεμενος* thus associating the original use of the word with the process of division or limitation. The Romans followed the Etruscans very closely in these observances, and it was in this way that the Ager Romanus was apportioned by the king,<sup>4</sup> always with the accompanying religious service.

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1. Cum autem Jupiter terram Etruriae sibi vindicavit, constituit jussitque metiri campos, signarique agros....terminis omnia scita esse voluit. *Rei Agrariae Scriptores*, edit. Goezjus p. 258.

2. Qui contigerit moveritque possessionem pro movendo suum alterius minuendo ob hoc scelus damnabitur a Diis. *Rei Agrar. Scrip.* p. 146.

3. In terris dictum templum locus auguris aut auspicii causa quibusdam conceptis verbis finitus. Müller defines templum in this connection thus : Templum ist jeder für Auspicien bestimmte Bezirk.

4. Numa Pompilius statuit eum, qui terminum exarasset, et ipsum et boves sacros esse.

The Ager Romanus was the land lying just outside the city,<sup>1</sup> and as I pointed out when speaking of the municipia, it was to it that the rights of citizenship were extended. It was apportioned to the heads of the patrician families, and always by a religious service consecrating it. As, however, none but citizens could take part in the services of the augurs and auspices, these services may have been regarded as sealing their title to the land, and at the same time confirming their rights of citizenship. The two ideas were inseparable, and it was this that drew the line of distinction between the patricians and the plebs, who were the profane, the unconsecrated, the vulgus. Strangely enough, Montesquieu thought that under the kings land was held in common, and Niebuhr, resting on the expression that Romulus granted land *viritim civibus*, concluded that land was given to all Romans without distinction of class, but he evidently did not attach due importance to the term *civis*. Undoubtedly land was granted to those who could not be fully reckoned citizens. Outside the Ager Romanus lay the Ager Publicus, and out of this at an early period were granted to the members of the plebs two acres, *bina jugera*. A little later, under Numa Pompilius, the grant was extended

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1. It is quite true that later writers sometimes use the term ager Romanus of land acquired by conquest, and appropriated by the state, but never of lands outside of Italy.

to seven and a half jugera. But while the fields of the Ager Romanus were granted as a permanent possession, "Dominium," and consecrated by religious service, the land granted out of the Ager Publicus was a simple concession, not consecrated by any religious service, and revocable at any time.<sup>1</sup> It was a simple usufruct, "possessio," and, if not at first, certainly afterwards a certain rate was exacted from the holders of this land. It was from this rate that the state drew a large part of its revenue, while the patricians as full cives and proprietors, enjoyed immunity from taxation. It is interesting to observe how remarkably history repeats itself. In the tenure of property in the feudal regime of the Middle Ages, and in the immunities of the feuditories, we have a repetition of the tenure of land at Rome, and of the condition of the proprietors of the Ager Romanus. It would scarcely be right to believe that the later tenure of land with its immunities was copied from the earlier, but rather that circumstances somewhat similar produced somewhat similar results. So long as Rome was under the kings, it would seem that the power of the patricians was in some degree restrained, and the interest of the plebians pro-

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1. This land, however, is also spoken of as heredium, and though revocable it might be still heritable—inherited, but not saleable or exchangeable.

tected. Our information is certainly obscure. We have no record of remonstrances on the part of the plebs during the regal period such as we have during the Republic, and the overthrow of the monarchy was undoubtedly due to an aristocratic movement. The fall of the monarchy meant the accession to power of the aristocratic class, and now it would seem that the consecration of the fields or the limits fell almost entirely into abeyance, only to be revived for a different purpose under the Empire. But what had been a consecrated privilege, sealed by religious rites, became an aristocratic privilege. The transition can be easily understood. As all power was vested in the patricians, these from various causes sought to extend their possessions beyond the limited *Ager Romanus*, and they gradually acquired large portions of the *Ager Publicus*, either by special grant, or by the right of *Usucapio*, and this land became *Ager Privatus*. The Decemvirs seem to have encouraged this spirit of aggression, and fixed the period of *Usucapio* at two years.<sup>1</sup> Whether this term of possession was then for the first time introduced, or whether it had previously existed, and was then only fixed, it is impossible to say. But now that the same proprietors held land in

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1. By Justinian, the *usucapio* was extended to ten years, if the parties were present, and twenty years if absent. *Justiniani inst.* 1 II, t. 6.

the Ager Romanus and in what had been the Ager Publicus, the same character of tenure became attached to both, and it was now held in *quiritarian* ownership. The person held it *ex jure quirritium*. Whether this applied to land in the provinces is uncertain. It was this absorption of land in the hands of large proprietors of the aristocratic, or rather the capitalist class, which led to the repeated passing of agrarian laws, as the Lucinian Rogations, and the measures of the Gracchi. But in spite of these laws, the evil continued to grow, and enormous tracts became the possession of one proprietor. Cato speaks of a property which it might require the owner two days to go over,<sup>1</sup> and Cicero mentions the provinces in Africa as being held by six owners. The smaller properties of free and independent farmers became rapidly acquired by the larger proprietors, and the fundus everywhere gave way to the *lati-fundium*. The form of labour underwent a complete change. The *latifundia* were cultivated by slaves, of whom very large numbers were employed, and as before pointed out, when speaking of the evils of slavery, this mode of farming destroyed all free labour. Farmers cultivating their small portions of land by their

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1. *Paterfamilias ubi ad villam venit...fundum eodem die, si potest, circumeat, se non eodem die at postridie ubi cognovit quo modo fundus cultus fiat. Cato, De Re Rustica, Chap. II.*

own labour could not possibly compete with the latifundia farmed by slave labour. It was the practice under the Empire on the conquest of a country to take possession of not only a third of the land, but also of all movables, including the slaves. In some instances, two-thirds seem to have been taken, and in cases of long resistance or revolt, as in the case of Capua in the Hannibalic wars, all the possessions, movable and immovable, were confiscated, but as a general rule it was one-third that was taken. Now on the land thus acquired in the provinces the disbanded legionaries were very generally settled. They each received thirty jugera<sup>1</sup> to be farmed by their own labour, for which they paid a certain property tax; they were also bound to render military service, forming indeed a reserved force, to be called out as necessity might require. This practice of taking a third of the property acquired by conquest seems to have been very generally followed by the Gothic tribes, settling within the Empire, as we shall have to consider more fully afterwards. We shall also find that the feudal baron in France granted thirty acres to his serf, and on conditions very similar to

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1. With this land, the legionary received a yoke of oxen, fifty modii of wheat, fifty of oats and some farm implements. The veteran received a double portion of land and chattels; and a centurion a multiple by eight, or two hundred and forty acres and the same proportion of chattels.

those on which the thirty jugera were granted to the Roman legionary. It was much the same with the virgate of thirty acres which the English lord of the manor granted to his villanus. In time, however, the lands granted to the legionaries seem to have fallen into the hands of the larger proprietors; later writers make no distinct allusion to them, and they do not appear to be mentioned in the Digests or the Theodosian code. We must not suppose that the latifundia were all arable land. The poet Ausonius mentions a farm of a thousand and fifty acres, of which only two hundred were arable, fifty in meadow, one hundred planted in vines, and the remaining seven hundred in wood. Another estate of considerable extent consisted in woodland and pasture, on which large herds of cattle and flocks of sheep pastured. Varro and Columella give us very detailed accounts of the mode of farming, of the number of hands employed, and of the distribution of labour.<sup>1</sup> But long before the invasion of the Goths, from

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1. The history of the change in the form of labour employed is treated with much fullness and clearness by Marquardt b. II, and by Baude di Vesme, *Vicende della Proprieta in Italia*, l. 1, ch. IX, and by Fustel de Coulange *De Colonat Romain*. But all these writers seem largely indebted to an article by Savigny *Über dem Römischen Colonat*, in the *Zeitschrift für Geschichtliche Rechtswissenschaft*. Much information is derived from the Theodosian Code, which here as in much else is a vast repertoire of facts regarding the later Empire.

whatever cause, the number of slaves employed seems to have decreased, and it became necessary to seek other labourers. Some of the original inhabitants, or some of the Goths living on the outskirts of the Empire, were employed not indeed as fully free men, but as *coloni*, cultivators settled on portions of land allotted to them, to which they were legally attached, and who like serfs at a later period could be disposed of with the land. Another class, frequently mentioned by later writers, and in the Theodosian code, was the *liti*, whom it is very difficult to distinguish from the *coloni*, and who, like them, though enjoying a certain degree of freedom, were yet also attached to the land. They were to be met with generally in the country along the Rhine, and other outlying districts, though Constantius seems to have transferred some into the interior, where Ausonius identifies them with the *coloni*.<sup>1</sup> But a change some time in the fourth century affected the general character of slavery, which in many instances gave way to serfdom. The cause of the change has been the subject of much speculation. Some attribute it to the growing influence of Christianity. But though the whole spirit of Christianity is opposed to slavery, yet in its earlier history Christianity did not

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1. The origin and position of the *liti* are treated very fully in Grimm's *Deutsche Rechts-alterthümer* and by Gaup *Die Germanische Anseidlungen*.

interfere with the existing state of things, and St. Paul sent back Onesimus to Philemon with the well-known epistle, and we know that Christian nations have till lately permitted slavery. Others have attributed the change to the example of the Gothic nations, who are believed, though on slender grounds, to have maintained serfdom and not slavery; others to the extension of the system of the colonat. I may suggest another and perhaps a more cogent reason. The revenue of the Empire was derived principally from three sources, first, indirect taxation; secondly, taxes on landed property; thirdly, a capitation tax. This last tax was not levied on the holders of property, at least not till the period of the later Empire, but on all who did not hold property, therefore on all slaves, whether workers in the cities or those occupied in the cultivating of the fields. In each case it was paid by the master, who might, however, exact it again from his coloni.<sup>1</sup> In the growing exigencies of the Empire, and with the increase of slave labour, the burden of the taxes became very heavy, and the proprietors seem to have adopted the expedient of granting portions of land to their slaves, on condition of their cultivating it, and making a certain return. The land was granted or leased generally for a lengthy period

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1. Gibbon, chap. 18, note.

on the principle of the emphyteusis, which was a direct contract between the owner (*dominus emphyteuseos*), and the lessee or grantee (the *emphyteuta*), who in this case might be a colonus or a slave.<sup>1</sup> The emphyteusis is represented as either private or public. The *emphyteusis publica* was land held by some public body—a *municipium*, or a monastery, or the public fisc—and paid a fixed tax, so that the land was *ager vectigalis*. The *emphyteusis privata* was land held by a private individual and leased by him, and there was no fixed regulation as to the payment of taxes. It was distinguished from the *ager vectigalis* as *praedia emphyteutica*. Justinian, however, placed both under the same conditions, so that they were all reckoned alike as *agri vectigales*.<sup>2</sup> Now this change of the tenure of land seems to have effected a change from slavery to serfdom. How far the change extended, it is quite impossible to say. We know that the *colonat* prevailed throughout the Empire, but the substitution of serfdom for slavery is later, and its possibly limited extent may account for the fact that it was rarely alluded to. But neither

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1. Savigny treats the subject of emphyteusis very fully in his book *Das Recht des Besistzes*, ch. ix; also Baude di Vesme, *Vicende della Proprieta in Italia*, t. I, ch. V.

2. Vid. *Justiniani Institutiones*, book III, ch. 24.

the system of colonat nor the substitution of serfdom for slavery seems to have materially improved the condition of the Empire. The moral condition of all classes had fallen too low, and the means of remedy were too feeble to give any hopes of improvement. The population was rapidly decreasing. A plague in the middle of the second century carried off a very great many, and the land was everywhere lying waste. Even under Constantine, many of the larger proprietors abandoned their property in order to escape its burdens, and we learn that at that time 520,000 jugera or 330,000 English acres in Campagna alone had been abandoned.<sup>1</sup> It was much the same in the provinces. Gaul, whose land is very fertile, was obliged to import corn to supply the wants of its comparatively sparse population, while, at the same time, its taxes were exceedingly heavy. It is calculated that its population was 1,529,000 and its taxes 521,771,250 francs, some four times as much as is now raised proportionately per capita.

In this and the four previous lectures, I have tried to give you a picture of the state of the Roman Empire at the time that the Huns under Attila and the Goths under Alaric were threatening it. It is scarcely possible to depict any history more sad, or downfall more complete. The towns

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1. Gibbon, ch. XVII.

were the homes of a population, of which one class was possessed of great riches, which they were spending in coarse and sensual indulgence; the only other class was in a state of sad indigence, supported by the state, and amused by games of the most degraded and vicious character. The rural districts both in Italy and the provinces were in very many instances lying waste, or were converted into pasture. Feuds and frontier wars, as well as famine and disease had very greatly diminished the population throughout the whole Empire, while the taxation, at all times heavy, became exorbitant, as the wars entailed great expense, and there were fewer to bear the burden.

Yet, notwithstanding the many changes which Rome had undergone there were still remaining vestiges of her former greatness to contribute something of her character to our modern civilization. Her language and her literature, her laws and her municipal system became the heritage of the Middle Ages, and it shall be now our purpose to watch the new development, as it became associated with the stronger and more liberal elements which came from the north.

## LECTURE VI.<sup>1</sup>

### THE INVASIONS BY THE HUNS AND THE GOTHs.

Around the Empire, that society of which I have tried to give you a picture, a society wanting in the essential elements of unity, becoming more and more separated and falling to ruin, there was a circle of tribes ever threatening its destruction. Africa had its tribes of the Atlas, Egypt the dark hordes of Nubia and Abyssinia, Asia the Nomads of the Caspian and Black seas, Britain the turbulent clans of the Picts and Scots, while the Parthians were ready to break through the Eastern borders. Yet it was not from any of these that the real danger lay, but from those Gothic invaders who had established themselves in the centre and north of Europe. We have no means of determining exactly when the Goths permanently settled in Europe. They

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1. The books consulted for this lecture are Jornandes, *De Getarum Origine, et Rebus Gestis*. Procopius, *De Bello Gothico*. Ammianus Marcellinus. Dahn, *Die Könige der Germanen*, b. I, II; Zeuss, *Die Deutsche und die Nachbarstämme*. Contzen, *Die Wanderungen der Celtén*. Thierry, *Attila et ses Successeurs*. Thierry, *Hist. des Gaulois*. Glasson, *Hist. du Droit et des Institutions de la France*, t. I. Guest, *Origines Celticae*, vol. I, ch. I & II. Lavissee (par G. Bloch), *Hist. de France*, t. I.

apparently advanced from the East,<sup>1</sup> driving before them the Celtic tribes, till these found themselves confined to the Western part of Europe, and the islands off the coast. They had at one time occupied the whole of central Europe, including the three southern peninsulas. Zeuss has classified the Celts of a later period under the four great divisions of the Gallic, the Belgic, the British and the Irish, each distinguished by peculiarities of dialect, each however admitting several sub-divisions. In the second book of Cæsar's Gallic wars, we have mention made of several distinct tribes of the Celts who occupied Gaul. A brave and war-like people, they had on one occasion advanced to the walls of Rome, and had threatened to occupy the city. But at a later period, they had been obliged to yield to the pressure of the Goths, and at the time when they become known through Cæsar's narrative, they were confined to the present Belgium, to Gaul, Spain and the British Isles, and after the conquest by Cæsar, Gaul became one of the most important provinces of the Empire. Dion Cassius reports the saying of Marcus Antoninus, "This Gaul which is now submissive to us is as well cultivated in all its parts as Italy itself. Its rivers are covered with vessels, not only the Rhone and the Saone, but the Meuse and the

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1. I am not prepared to accept the result of Herr Puchta's researches.

Loire, as well as the Rhine and even the ocean.<sup>1</sup>" Rome had compelled Gaul to adopt her language, her laws, her customs and her municipal system, so that she became almost perfectly Romanized. She retained very little of her original Celtic character, and even her ancient Druidism seems to have largely yielded to either Roman scepticism or to Roman religion. The remains of Roman art and architecture, which are still found, show the degree of culture and refinement which had been reached by the Romanized Gauls. A writer of the reign of Vespasian says, "In Gaul the sources of wealth are at home and flood the earth with their abundance."<sup>2</sup> Nowhere were there so many and such magnificent country houses as in the south and east of Gaul, and especially along the Rhine and the Moselle. A perfect network of roads connected one part with another, and communicated with the great military roads which radiated from Rome. Gaul too had made much advance in literature. Quintillian held in high estimation the orators of Gaul, and Ausonius, a native of Bordeaux, one of the most accomplished scholars, and most prolific writers of his day, was chosen by the Emperor Valentinian as a tutor for his son, the future Emperor Gra-

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1. Glasson, t. I, p. 178. Dion Caasius XL. 42.

2. Josephus Bell, Jud. II, ch. XVI.

tian. This is not an isolated instance, but one of many, which show the advance that Gaul had made in literature and art. But, unfortunately, Gaul suffered from the same evils and the same oppression as the other parts of the Empire. Here too the extension of slavery destroyed the free agricultural and commercial population, and reduced many parts of Gaul to desolate wastes, badly cultivated, ill-drained, covered with rude forests and wild morasses. The riches of some of the cities of Gaul offered a great attraction to the cupidity of unprincipled emperors, and the tax-gatherers reaped for a time rich plunder. Before the subjugation of Gaul by Cæsar, the several tribes had been at war with one another. The two principal tribes, the Edui and the Sequani, had for long contended for the supremacy, till the Sequani entered into relations with the Germans, who under Ariovistus invaded the territory of the Edui, and took possession of a good part of Eastern Gaul. Shortly after, the Helvitii, passing through the defiles of the Jura, advanced as far as the Saone. It was these movements which induced the Edui to join the forces of Cæsar, with the result that their combined forces were able to drive the Germans back over the Rhine. It was in this way that Rome was brought into rude contact with the Germans, and Cæsar seems to have apprehended the danger which might threaten the Republic if

the Germans should press into the Roman territories. In 9 B.C., Drusus penetrated into north Germany as far as the Elbe, and paid for his temerity by his life. Tiberius found it difficult to protect the Empire from the incursions of the Germans, and in 9 A.D., Varrus suffered a very great disaster not far from the Lippe. It is impossible to determine the exact time when the Teutonic tribes established themselves in Europe. They are members of the great Aryan or Indo-Germanic family, to which the Celts and the Slavs also belong. When we first gain our knowledge of them, they occupied the greater part of central and northern Europe. Though they comprised a large number of separate tribes, they may roughly be grouped into two main branches, the Scandinavian or the Northern, and the Germanic. When they became separated, it is impossible to determine. There are indeed Sagas, which they had in common, and which point to a common ancestry, but the course of their development and their institutions differed in several particulars.<sup>1</sup> It is not necessary to trace the movements respectively of the two branches, for our information is not only uncertain, but in many instances tribes

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1. The divisions made by Tacitus or by Pliny are of no political importance, are simply traditional, and do not need to be referred to here. Vid. Grimm's *Deutsche Mythologie*.

from both became so united that it is impossible to distinguish them. The Vandals<sup>2</sup> very possibly belonged to the Scandinavian or northern branch, but we find them associated with the Marcomanni on the Danube and threatening the Empire at the time of the Antonines. In the third century, a large number of tribes was included under the name of Franks, and the name of Saxons was applied in common to the tribes along the Weser and the Elbe, while those between the Main and the Danube were known by the general appellation of Alamanni.

In the middle of the third century we find the Goths established in the country along the Danube and in Thrace, and in three successive expeditions they crossed to Asia Minor, overran Bythinia, and in the last expedition destroyed Ephesus. A hundred years later they invaded the eastern part of the Empire. These movements in the East, and these incursions within the limits of the Empire were no doubt caused by the necessity of changing their home on account of famine and a growing population, but principally by the pressure of the Huns. The Huns were a Mongolian race, and therefore of Turanian origin. They had occupied the immense plains of Tartary, and

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2. Zeuss, *Die D. N.* s. 444. Dahn *Die Kön. Ger. B.* II s. 140. Giesebricht, *Geschichte der Deutschen Kaiserzeit.* B. I, s. 37. Gebhardt, *Handbuch der Deutschen Geschichte* B. I, s. 85.

led a nomadic life, pasturing their flocks on the wide steppes, or supporting themselves by the chase. They had rendered themselves formidable to the several thrones of Asia, and the Chinese, the Persians, the Syrians and the Greeks of Asia Minor had more than once trembled before them. In the latter half of the fourth century, they had moved westward till they came in contact with the Goths. The Alani were the first to feel their attack, and were easily overcome. The Goths on the shores of the Euxine and the lower Danube were next encountered. These were forced on the boundaries of the Eastern Empire. Pressed behind by the Huns, and driven back by the imperial armies, many were obliged to implore the protection of the reigning Emperor, Valens, while others, as the Ostrogoths,<sup>1</sup> submitted to their fate, and became subjects of the haughty Attila, king of the Huns. Valens, after some delay, granted the petition of the Visigoths, and transporting them over the Danube allotted them settlements within the limits of the Empire. The Huns, pressing still further westward, reached at length the confines of North Italy and the banks of the Rhine. They also appear to have established themselves in the country now called Hungary, where they were subsequently joined by the Magyars, and held it as

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1. The Goths are supposed to have separated a little before this into the Visigoths and the Ostrogoths.

their permanent possession. After the overthrow of the Goths on the borders of the Eastern Empire, the Huns were ready to break through its confines. Theodosius, who had succeeded to the purple, was perhaps the ablest of the Eastern Emperors after Constantine, but was helpless under the circumstances, and was obliged to make offers of peace to Attila. The terms were most humiliating: (1) A large part of Thrace was to be given over to the Huns, (2) a large annual tribute was to be paid, (3) every captive Hun was to be released without ransom and without any delay, while every Roman captive who had presumed to escape should purchase liberty at the price of twelve pieces of gold.<sup>1</sup> These terms were too humiliating to secure peace for long, but in the meantime they permitted Attila to direct his attention to the Western Empire, and he overran Gaul till he reached Orleans. At this time, Aetius was the governor of this western province. He was undoubtedly a man of vigour and ability. He collected a large army of Gauls and Romans, while by his lively eloquence and with the aid of Avitus, a Roman Senator, he succeeded in inflaming the Gothic warriors by a description of the injuries which their ancestors

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1. Thierry, *Attila*, v. I, p. 61; Gibbon, ch. XXXIV.

and themselves had suffered from the Huns.<sup>1</sup> The Goths yielded to his solicitations and his arguments, and with their combined forces he compelled Attila to retreat from Orleans, and, following up his victory, he gave the retiring Huns battle in the neighborhood of Chalons sur Marne.<sup>2</sup> The battle was fought with great obstinacy, but the Huns were defeated, and now turning to the south threatened Italy. Several of the towns of North Italy submitted, and were obliged to pay a large ransom, but were not subjected to further loss. Many fugitives from Milan, Pavia and other cities fled and took refuge in the lagoons on which the city of Venice now stands. This, if not the origin, marks the re-establishment of that city which afterwards played such an important part.<sup>3</sup> In the next year, 453, Attila died through the bursting of an artery. The death of the king and general of such an undisciplined host as the Huns almost necessarily implied the breaking up of the horde. The great body retreated, and the majority no doubt joined those who had established themselves in Hungary.

I mentioned that, when pressed by the Huns, the Goths, both Visigoths and Ostrogoths, had

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1. Thierry, *Attila*, v. I, p. 170.

2. Gregory of Tours, t. II, 157. Jornandes ch. XXXVI.

3. Daru *Hist. de Venise*, v. I. p. 24. Sismondi, *Ital. Rep.*, v. I, 304. Gibbon, ch. XXXV.

implored permission from the Emperor Valens to take refuge within the confines of the Eastern Empire. The Imperialists, however, took advantage of these Gothic refugees, and levied a very heavy tribute from them. The government of Thrace, where the Goths had found a temporary settlement, was confided to unprincipled governors, who oppressed the Goths by every means in their power. These at length rose in rebellion, and defeating the army which was sent against them, acquired possession of the province of Lower Moesia, and afterwards of a good part of Thrace; then, marching towards Constantinople, they met the Imperial army under Valens himself in the neighborhood of Adrianople. In the battle which took place, the Romans were defeated with very great loss, and Valens himself was among the dead. Polybius likens this defeat to the defeat suffered at Cannae, for some two-thirds of the Roman army was destroyed. The Goths laid siege to Adrianople, but being unskilled in siege warfare they were unable to take the city. From Adrianople the tide of invasion rolled on to the walls of Constantinople. The historian depicts the amazement of the Goths at the size, the beauty, the wealth and also the strength of the eastern capital.<sup>1</sup> A sudden sally from the city convinced the Goths of the

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1. Iornandes *De Bello Gothico*, B. I, ch. XXVI.

wisdom of withdrawing. The Romans of the East had enlisted in their army Saracens from the outskirts of the Syrian provinces, and these formed a formidable light cavalry, which by their dexterity, and the skilled evolutions of their irregular warfare, and the swiftness and spirit of their horses, overcame the Hunic cavalry, that had fought in the army of the Goths. Withdrawing from the Bosphorus, the Goths spread over Thrace, and extended even over Pannonia to the foot of the Julian Alps and the borders of North Italy. They had chosen as their leader Alaric, a man of undoubted ability and striking prudence, as well as great determination. The reigning Emperor of the West was Honorius, a weak and irresolute man, utterly unfit to hold the reins of government at such a time. The troops of the Western Empire were then under the command of Stilicho, a ~~Goth~~ <sup>Vandal</sup>, who sometime before had entered the service of Rome. He was deep and designing, true only to his own interests, but he had rapidly risen into power and had been elevated to the consulship. He had married Severa, the niece of Theodosius, the last Emperor, who combined in his own person the sovereignty of the Eastern and Western Empires. It was Stilicho who compelled the Goths to withdraw from Greece, and he now prevented their advance into Italy. He gave them battle at Pollentia, and gained a complete

victory. The Roman soldiers, breaking through the entrenchments of the Goths, turned their camp into a scene of rapine and slaughter. Still this victory cost the Romans dear, and Stilicho felt that he would best consult the interests of the state by making offers of peace to Alaric. These offers seem to have been of such a nature as Alaric could not accept. His spirit was unbroken, and he seems to have possessed that invincible temper of mind which enabled him to rise superior to every misfortune, and derive new resources from adversity. Stilicho followed up the retreating enemy, and won a second victory near Verona. In the meantime, another body of Goths or rather Germans, under Radagaisius, had threatened Italy from the western side. It seems not to have been difficult to excite jealousy between the several Teutonic tribes, and Stilicho, having largely augmented his forces from amongst the Alani and others, attacked Radagaisius. Radagaisius was distinguished by all the fierceness and cruelty of a barbarian, and his march was marked by blood and rapine. He laid siege to Florence, and this city was reduced to the last extremity when Stilicho came to its assistance. In the battle which took place the Germans suffered a complete defeat, and though they lingered for some time longer in Italy, they were at length obliged to withdraw. The success which had attended

Stilicho had excited his ambition, and he contemplated placing the imperial crown, after the death of Honorius, on the head of his son Eucherius. But the rise of such a man as Stilicho was certain to stir up the jealousy of less fortunate aspirants to distinction, and to their intrigues Stilicho at last fell a victim. The removal of Stilicho left Rome without any able leader. Alaric again invaded Italy, and advanced on Rome, to which he laid siege. The city was reduced to the last extremity when the authorities implored the clemency of Alaric, and offered a large ransom, which the Gothic king accepted, and once again withdrew from Italy. Shortly after, however, he again invaded the country, and now he intercepted the connection of Rome with the sea, and cut off her supplies. Ostia, which was situated at the mouth of the Tiber, had of late years grown to great importance, since it was the port of Rome, and the granary where was deposited the corn of Africa intended for the use of the capital. Alaric now placed himself between Ostia and the city, thus threatening the destruction of the stores on which the life of the Roman people depended. Honorius had withdrawn from the city to Ravenna, and Alaric proposed that the Romans should receive as Emperor one of his own nomination. Attalus was placed on the throne of the unworthy Honorius, and Goths and Romans

united in acknowledging his sovereignty. But the government of Attalus was not prosperous. His armies were unsuccessful, and as he caused dissatisfaction by the way in which he distributed his favours, both Romans and Goths united in deposing the man whom a little before they had united in raising to the purple. Once more Alaric, who had for a time withdrawn, besieged Rome and obtained possession of it, and the Goths sacked and plundered the city which had so long been the mistress of the world. It is usual to represent the Gothic invaders as barbarians, who destroyed all works of art, and plundered the temples, but this is scarcely correct. It is true that Jerome and Augustine both give a sad picture of the fall of Rome. Jerome tells us that every day men and women who had passed their lives in patrician luxury arrived at his hermitage in Bethlehem, begging their daily bread. "For twenty years," he bitterly cries, "Roman blood has been flowing every day between Constantinople and the Julian Alps. Thrace, Macedonia, Dardania, Dacia, Thessalonica, Epirus, Achaia, Dalmatia and the two Pannonias all belong to the barbarians, who ravage, rend and devour everything before them. How many noble matrons and maids have been the toys of their lusts, how many bishops enchained, priests butchered, churches destroyed, altars turned into stables, relics profaned; sor-

row and mourning and death are everywhere; the Roman world is crumbling into ruins." The language of Augustine presents a picture scarcely less sad.<sup>1</sup>

When contemplating these representations, we must remember that from the time of the civil wars under Marius and Cinna, Drusus and Sulla, Rome had been passing through frequent seasons of revolt, and that the Roman mob had destroyed very much property. We have reason to believe that this destruction was attributed by later generations to the Goths. But it is a mistake to suppose that the Goths were mere rude barbarians. They had long been familiar with the civilization of the Empire. They had lived on its confines. Many had enlisted in its armies, while bands had settled within Roman territory. They had also trade relations with Rome. They had been familiar with the life and the manners as also with the architecture and the art of the cities in the outlying provinces, such as Treves, and Cologne, but more especially of the cities in the east, and along the Danube. Many of the Goths, especially those under Alaric, had embraced Christianity, while in the east and settled within the limits of the Empire,

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1. Yet Augustine tells us that these Goths were very respectful to the Christian temples, and that very many of the citizens took refuge in them. Augustine, *De Civitate Dei*, B. I, p. 2.

they had been instructed in the Christian religion. Ulfilas, a Goth, had become Christian, and had been received into church orders. He had laboured as a missionary among his fellow Goths in Moesia, and had for their use translated the gospels if not the whole of the New Testament into Moeso-Gothic. This must all have had a softening influence, toning down the harsh asperity of those whose lives would otherwise have been spent in warfare, and who previously had known nothing of lofty moral principles, except that they always seem to have respected female chastity. Alaric had professed himself a Christian, and it is scarcely likely that he would have allowed his men to indulge in any extreme licence. Still the horrors of the sack of Rome and of other cities of the Empire were quite bad enough. Roman government and Roman society had become dissolved, and in the army as well as in the towns anarchy everywhere prevailed. The worst passions were raised and given loose rein to, and what wonder if in this state of confusion and of bitter rancour there should have been much wanton destruction of property, and much sacrifice of human life. As a late writer has said, we who have read of the sack of Magdeburg and Badajos, by armies professedly civilized and Christian, can imagine what may have been the sack of Rome. After six days Alaric withdrew his army, and attracted

by whatever hope he turned south, and proposed crossing to Sicily. But delayed by stormy weather, and still resting near Consentia, Alaric sickened and died. The Goths had been two years in Italy, and they remained two years longer. Many under the leadership of Ataulph offered their services to Honorius against the Huns and other enemies of the Empire. But the greater bulk of the Goths recrossed the northern boundary, occupied the south of Gaul and the north of Spain, and founded the kingdom of the Visigoths.

## LECTURE VII.<sup>1</sup>

### THE SETTLEMENT OF THE OSTROGOTHS IN ITALY AND THE INVASION BY THE LOMBARDS.

The Visigoths had withdrawn, but Rome was not long to enjoy peace. Honorius died, leaving a child, Valentinian, to the care of his mother, Placidia. Under her regency, the court became the arena for political intrigues and strife. Two generals, Boniface and Aetius,<sup>2</sup> contended for supreme power, or at least for the favour of the Empress. Boniface asked the assistance of the Vandals, who under Genseric entered Italy and took possession of Rome.<sup>3</sup> They subjected it to all the horrors of a siege more greivous than the first, so greivous indeed that the memory of those horrors still lives in the

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1. The books consulted for this lecture are Procopius, *De Bello Gothico*, Jornandes, *De rebus gestis*, *Variae Cassiodori* tr. Hodgkin. *Edictum Theodorici*. *Eunodii Panegyricus Theoderici* edit Muratori; Dahn, *Die Könige der Germanen*, Abtheilung, III & IV; Hist. *Gregorii Turoneusis*, Manso *Geschichte des Ost-Gotischen reiches*; Hartmann *Gesch. Italiens im Mittelalter*. Baude di Vesme, *Vicende di Proprieta in Italia*, ch. VII-X; Gregorovius, *Gesch. der Stadt Rom*; Hodgkin, *Italy and her Invaders*, Vol. III.

2. The same who afterwards defeated Attila in Gaul.

3. Procopius *Bel Van*, I, 2-5.

languages of Europe, and the term vandalism continues to suggest destruction and outrage. The Vandals, however, did not remain long in Italy, for they passed into Spain, and shortly after crossed to Africa, where they took possession of the Roman provinces, and established a kingdom on their ruins. They for some time defied the efforts of the Romans to dislodge them, till Belisarius broke their power, and they disappear from history, having either been put to death by the Moors, or having embraced the Mohammedan faith. In the surging of the nations during the fifth and sixth centuries, it was impossible for the Empire to remain long free from invasions, which she was too weak to resist. Both the eastern and western parts of the Empire were in utter confusion. Successive Emperors were elected and almost immediately fell, Arcadius, Anthemius, Pulcheria, Eudocia, the second Theodosius, Zeno and Anastasius in the east, Honorius, Placidia, Valentinian III, Maximus, Avitus, Majorian, Severus, Anthemius, Olybrius, Glycerius, Nepos and Augustulus in the west. Such were the men who disgraced rather than honoured the purple; men without wisdom, without force of character, without principle or honour, who were elevated to the throne through the vilest intrigues, and whose reigns were a succession of crimes; each of whom was in turn the victim of intrigues as disgraceful

as those by which he had himself succeeded to power. After Valentinian, nine Emperors of the west succeeded one another within the short period of twenty years.

Among the generals of the Empire who had been close colleagues were Orestes and Edecon. Orestes was a native of Pannonia, and when that province was held by Attila, Orestes became his secretary. On the withdrawal of the Huns he took service under the Italian Emperors, was raised to patrician dignity, and was made master-general of the troops. When Nepos was compelled to abdicate, the troops offered the purple to Orestes, but, from whatever motive, he declined the honour, and they consented to acknowledge his son Augustulus Emperor of the West. His colleague, Edicon, had risen in power scarcely less rapidly. He was a Goth of the tribe of the Sciren, and had also served under Attila. He was a true type of the barbarian, but like Orestes had accepted service under the Western Emperor. He had two sons, Onulf and Odoacer,<sup>1</sup> whom he left by his early death to struggle with adversity. Onulf turned to Constantinople and gained distinction by gallant feats of arms, but did not make a name for himself in history. Odoacer

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1. Manso doubts whether Edicon, the father of Odoacer, is the same as the colleague of Orestes, but Gibbon, Dahn, Hartmann and Troya think they are identical.

led for some time a wandering life among the barbarians of Noricum, but at last entered the service of the Western Empire, and soon rose to distinction. He was a man of commanding appearance, of great physical power, of undoubted bravery, and by his exploits established a high character for his courage and capacity. By the acclamations of the soldiery, he was saluted as King, but never assumed the title of Emperor, or took the purple or the sceptre.<sup>1</sup> From 476 to 490 he governed the West, the first barbarian who ruled a people that had so long asserted their superiority over the rest of mankind. The line of Roman sovereigns was broken, and it is strange how little attention the change excited. It may be thought that the fall of Rome would have convulsed the whole civilized world, would indeed have involved it in the crisis. Contemporaries, however, showed little emotion, for a strange apathy had fallen on all minds. The change had come so gradually, affairs had grown from bad to worse, and now when the end had come very few seem to have heeded, none expressed any alarm or anxiety. Odoacer no doubt contributed to this result, for he changed nothing. He sought to revive the old constitution, he re-established the consulship

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1. Cassiod Chron anno 476. "Nomen regis Odoacer adsumpsit, cum tamen nec purpura, nec regalibus uteretur insignibus."

of the West, and he filled it and other offices with the most illustrious and honourable of the senators. He continued the whole machinery of imperial government, and its wheels appear to have revolved with the impulse of ages.

It would seem that the Goths, Herulians, Rugians, Sciren and others settled in groups, or clans, or small tribes, in various places of North Italy as they chose,<sup>1</sup> and that according to the old Roman practice, which they undoubtedly followed, they received or took a third of the land, and of the serfs or slaves that were attached to it. But they were thus intermingled with the Roman population, who by contemporaries are called *consortes*, and if the Goths were governed by their laws, the Romans were certainly allowed to retain theirs, by which they continued to be ruled. Zeno, the reigning Emperor of the east, recognized, if he did not openly endorse, the administration of Odoacer, and his taking possession of a third of the land with his rule over the West. But it was hard to keep in check the elements which had brought about the ruin of the Empire. It was dangerous to put confidence in any one party in the state, while the barbarians were ever threatening new invasions.

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1. Cassiod. var. VII, 3, "Cum sciamus Gothos vobiscum habitare per mixtos.

Theodoric, the Ostrogoth, was descended from the royal line. He was born two years after the death of Attila. The Ostrogoths had been subdued by the Huns, but had regained their independence, and three brothers, Walamir, Theodimir and Widimir, with their united councils, ruled the warlike nation.<sup>1</sup> Theodoric was the son of Theodimir, and when the brothers entered into a treaty of alliance with the Eastern Emperor Leo, as a pledge for the carrying out of the terms of the treaty, the royal lad, then in his eighth year, was handed over as a hostage.<sup>2</sup> In this way Theodoric spent his earlier years at the court of Constantinople, and became acquainted with its intrigues, its crimes, and its weakness. Yet he seems to have been true to the friendships he formed there, and he aided Zeno in overcoming the difficulties in which he was placed. That wily Emperor lavished on Theodoric all the titles and dignities he could bestow. He made him patrician and consul, gave him command of the Palatine troops, and caused an equestrian statue to be erected in his honour. He also supplied him with money, and promised to unite him by marriage

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1. Jornandes tells of the relations of the three brothers LII.

2. Hist. Miscella. edit. Muritori, R. I. Scrip. XV ; Manso, p. 17, Dahn, Abtheilung II, p. 61.

with the imperial family.<sup>1</sup> There was another Theodoric,<sup>2</sup> the son of Triarius, not of the same high birth as the son of Theodimir, still a Gothic leader of valour. In the same district as was occupied by the Ostrogoths, he revolted against the Emperor, who was obliged to ask the assistance of the other Theodoric, and the latter took up arms in the cause of the Emperor who had been so friendly to him. But Zeno, with the accustomed duplicity of the Eastern Emperors, was playing fast and loose with the two Theodorics. He was treating with both while he was trying to stir the one up against the other. At length the death of the son of Triarius destroyed the balance which the Emperor was anxious to preserve, and as now the superiority of the Amal was no longer doubtful, Zeno concluded a treaty with him. But Theodoric, displeased with the treatment which his people were receiving from the Emperor, and feeling that he was himself becoming suspected by his own followers, determined on leaving the seats which had been assigned him, and to march into Italy. The movement was a migration of an entire people, for the Goths took their wives and children and their aged parents and all their precious effects, and we may form some idea of the vastness of

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1. Gibbon, ch. XXXIX.

2. Manso, p. 15. Dahn II, p. 63. Jornandes, LII.

the train which followed the camp by the loss of two thousand wagons, which was sustained in a single battle when crossing Epirus. The country through which they passed had become almost a desert. The long reign of imperial exactions, and the stagnation of all agriculture had turned well cultivated fields into barren wastes. Odoacer had excited the Bulgarians, the Gepidae and the Sarmatians, through whose districts the route lay, to throw every difficulty in the way of the host of Ostrogoths, while he himself had gathered all his forces and was entrenched in the neighborhood of Aquileia, determined to offer every opposition to the advance of Theodoric. Three times was Odoacer defeated, and he was compelled to retire to Ravenna. But Theodoric felt that Odoacer was no mean opponent, and he asked the assistance of the Visigoths of Gaul. By his abilities, however, his valour, his experience and determination, Theodoric was at length entirely victorious, and became the master of Italy. A treaty of peace was made with Odoacer through the intercession of the Bishop of Ravenna; but at a feast, a solemn commemoration of the happy termination of the war, Odoacer was stabbed, and Theodoric was left sole ruler in Italy. The attendants of Odoacer shared the fate of their master. We can not absolve Theodoric from the instigation of this crime, which must continue to tarnish his memory,

though a reign of thirty-three years, years of peace and prosperity, may be allowed to wipe out in some degree the ignominy of an act in keeping with the cruelty of barbarians, and no doubt dictated by jealousy, and by the fear of discord, which is always attended by mischief. There is little doubt that Zeno, while he had at least recognized the advance of Theodoric against Italy, had urged Odoacer to offer a strong opposition to him, hoping that if they did not destroy one another the power of the victor would be much weakened; now that Theodoric had destroyed Odoacer he refused to acknowledge him as king of Italy.<sup>1</sup> Odoacer seems to have held Italy simply as administrator for the Emperor, who maintained that he had authority over Italy as part of an undivided Empire, and the division of the land which had been made by Odoacer was through imperial officers, though by whose appointment it is difficult to determine. The position of Theodoric was different; he had overcome Odoacer and had established an independent authority, and though at first he was evidently willing to acknowledge the claims of the Eastern Emperor, it was scarcely likely that a man like Theodoric would long submit to the dictates of Zeno or his successor, Anastasius. He looked for support from his own people, as-

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1. Dahn Abth. III, p. 21.

serted his kingly authority, and was not satisfied with the mere position of Stadtholder.<sup>1</sup> He took possession of the third of the land, which apparently Odoacer had taken before him, and divided it among his followers. His followers, however, must have been more numerous, and they would require more land than had been previously taken.<sup>2</sup> In acquiring possession of the land and dividing it into respective portions, he showed a desire to act justly. He appointed Liberius, who had held the same office under Odoacer, a senator and a man of high reputation for judgment and honour, with other Roman officers, to carry out the acquisition and apportioning of the land; and the satisfactory manner in which he made the assignments—satisfactory alike to Romans and Goths—called forth the approval of both Theodoric and the Roman Senate.<sup>3</sup> The government of Theodoric was judicious and honourable. We may quote the words of Machiavelli, the great mediaeval statesman: "Having been the first to put a stop to so many evils, Theodoric deserves the highest

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1. Dahn *Abth.* III, p. 21.

2. This whole subject is very fully discussed by Gaup, pp. 469-76, Sartorius *Essai sur l'état du peuple d'Italie sous le gouvernement des Goths*, ch. II. Anon Valessie, edit. Muratori, however, states that Anastasius became reconciled to Theodoric "et ei omnia ornamenta palatii, quae Odoacer Constantinoplin transmiserat, remittit."

3. Cassiodorii *Variae*, b. II, let. 16.

praise; for during the thirty-eight years he reigned, he brought the country to such a state of greatness that her previous sufferings were no longer recognizable."<sup>1</sup> His government seemed to waken men to new hopes for Italy and the world, and indeed it is to this period that we may trace the origin, or the revival, of many of the renowned cities of Italy, which played such an important part during the Middle Ages. He rebuilt the walls of Rome, and restored the baths, the aquaducts, the gates and the sewers.<sup>2</sup> Theodoric had chosen Ravenna as the seat of government, as indeed it had been since Honorius had established himself there, when he fled from Alaric, and this city now received the special attention of the Ostrogothic king, who adorned it and built a palace, some remains of which are still standing.<sup>3</sup> He encouraged rural industry, which had so long been neglected, he drained the Pontine marshes, and opened up gold and silver mines in the Abruzzi and Dalmatia. He maintained both at sea and on land the security of trade and property,<sup>4</sup> while he also encouraged literary men. The

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1. Machiavelli, *Storia di Firenze*.

2. Gibbon, Chap. XXXIX. Gregorovius, b. I, p. 276, and b. III, p. 229-31. Cassiodori *Variae* b. VII and *Formulae* 5, 6, 13 and 15.

3. Freeman, *Hist. & Arch. Sketches*, p. 46, thinks these remains are part of a later addition.

4. Manso, p 118-137. Sartorius ch. X.

Senator and Historian Cassiodorus,<sup>1</sup> and Boethius, the last in the list of those who got their inspiration from the old philosophy of Greece, enjoyed the monarch's favour, though shortly after, on a charge of divination and treason, Boethius and his father-in-law, Symmachus, were put to death. But Theodoric was an Arian and he therefore never received the sympathy or assistance of the western church; for the establishment of an Arian power on the banks of the Tiber was intolerable to the spiritual power of the church at Rome. His last days were spent in gloom, and in dread of conspiracy and persecution. The Emperor Justin I, instigated by Pope John, proscribed Arianism throughout the Empire, and though Theodoric wished to make terms with him in order to mitigate the persecution, he was not successful and unhappily sought to retaliate, and it was on this account that Boethius and Symmachus suffered death.<sup>2</sup> Sentence was passed by the Roman Senate without entering into an examination of the charge. Pope John was committed to prison, where he shortly died.<sup>3</sup> Theodoric himself soon passed away, leaving the government to his daughter,

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1. Hodgkin has given a full account of the two Cassiodori, father and son. *Italy and Her Invaders*, vol. III, ch. VIII, note g. Sartorius ch. IX.

2. The question whether Boethius ever embraced Christianity will perhaps never be decided.

3. Baronius T. VII, p. 147. edit. 1601.

Amalasuntha.<sup>1</sup> He seems in his last days to have been overwhelmed with remorse for his conduct to Boethius and Symmachus.

The character of Theodoric's government may be gathered from the letters which have been preserved by Cassiodorus, his secretary, and from a study of the *Edictum Theodorici*. He copied very largely the institutions and the whole political system, as it had been formed by Constantine and his successors, a system which, however, was scarcely adapted to the changed circumstances in which Italy then was. The question might be asked, whether it would not have been possible to form a union of Gothic and Roman institutions, which might have conduced to the harmony and happiness of both peoples. Theodoric, however, was not a genius in this respect; he had had perhaps no experience in legislation, and he accepted the state of things which already existed. The list of his government officials is simply a reproduction of the list of those

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1. "He was buried in the Mausoleum he had built for himself, now no longer a Mausoleum but the deserted church of St. Maria del Rotondo. To the orthodox Catholic church the memory of the arch-heretic was always hateful. Close to the Mausoleum was built the Monastery of Sta. Maria, and it was deemed not proper that the bones of the heretic should lie so near the sacred precincts, and they were cast out, no one knew where. But some years ago, there was exhumed in the neighborhood a skeleton in a golden cuirass, supposed to be the remains of Theodoric." Hodgkin, III, p. 575.

who held office under the Emperors. The *Edictum Theodorici* shows no trace of Teutonic law or practices: it is entirely based on the models of Roman jurisprudence, and is little else than a copy of some parts of the Theodosian code. Nevertheless, the result of Theodoric's government was to bring about an amalgamation of races and interests, the Roman and the Gothic. Shortly before his death, Theodoric had presented to the leaders of the Goths his grandson, Athalaric, and declared him their future king. At the time, however, of Theodoric's death, Athalaric was still a child, and his mother, Amalasumtha, assumed the regency. She was a woman of strong character and rich intellect. The rule of a woman, however, though it were only a regency, was distasteful to the Goths, and dissensions arose not only between the Goths and Romans but among the Goths themselves.

Justinian had mounted the imperial throne eight years before the death of Theodoric. His reign presents a strange combination of weakness and strength of character. Successful in his wars, the internal affairs of the Empire were disturbed by the contests of factions. Avaricious, he was yet profuse and even prodigal in his expenditure; apparently anxious that his people should be strictly governed by proper laws and framing a code which has ever since given a

lustre to his name, he was yet not always just in his own administration. Yet with all his faults he was a great man, and his contribution to jurisprudence, appreciated in his own age, has created a monument more permanent than one of brass or bronze. Of the three works the Codex, the Pandects, and the Institutes, the first two form a complete body of laws; they are a compilation of the imperial legislation, while the Institutes are a very successful attempt to reduce the Codex, the Pandects and Novellae to a more simple and elementary treatise, and in its form as well as in substance, it may be accepted as expressing the full maturity of Roman civil and legal wisdom. It is not necessary to inquire into the motives which may have induced Justinian to seek to acquire possession of Italy; the opinion of contemporaries differed very much. But whatever the motives, the opportunity which the confusion of affairs in Italy presented was of itself a strong inducement, and under Belisarius the imperial armies, after the subjugation of the Vandals in Africa, invaded Italy, and for twenty years the peninsula was divided into two hostile camps. Rome underwent a succession of sieges, till Gothic rule in Italy was brought to an end and the imperial authority was restored. Justinian died in 565 and very shortly after Italy was threatened with another invasion. The Avars had more than once broken through the confines

of the Eastern Empire, but believing it too strong for a direct attack they turned westward and harrassed the Franks on the right bank of the Rhine. In 567 they formed a coalition with the Lombards. The original seat of the Lombards was probably Scandinavia, where they were known by the name of Winili, that of Lombard being of later date.<sup>1</sup> But our earliest reliable information regarding them places them along the Eastern bank of the Elbe, where they were closely associated with the Saxons. About the middle of the fourth century, a portion of the tribe migrated south-east, and established themselves along the Danube, and with the Avars they destroyed the kingdom of the Gepidae. The Gepidae had long been the faithful allies of the Romans, and had incurred the ill-will of the other tribes.<sup>2</sup> The king of the Lombards, Alboin, had displayed wonderful bravery in the contests with the Gepidae, and for centuries after many of the Gothic tribes commemorated in their warlike songs the prowess of Alboin. To a warlike chief of those barbarian tribes, there must have been a strong fascination in war, the more if it

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1. Zeuss, *Die Deutschen und die Nachbarstämme*, p. 472. Turk, *Geschichte des Langobardische Volksrecht*. Paulus Diaconus, II, 4-20.

2. Procopius gives at some length the appeal of the Lombards as well as the Gepidae for assistance; and the Emperor Justinian sent 10,000 men to the aid of the Lombards. Procopius, *De Bello Goth*, III, 34. Paulus Diaconus however makes no mention of this.

was attended by victory. The ambition of Alboin was not satisfied by his complete overthrow of the Gepidae, and he turned his attention from the banks of the Danube to the far richer banks of the Po and the Tiber. The lust of enterprise and the attraction of a victorious leader induced many of the adventurous youths from the other Gothic tribes to enlist in the army of Alboin. Warriors from the Bulgarians and Bavarians, and from the peasantry of Noricum and Pannonia, and of the Saxons, who alone had been the allies of the Lombards, twenty thousand<sup>1</sup> joined the forces of Alboin. Italy was still held by the Eastern Emperor, and Narses, who had succeeded Belisarius, had overcome all opposition, and, had he remained in command, it is doubtful if the Lombards and their allies would have been successful in their enterprise.<sup>2</sup> But in its weakness the Byzantine court was ready to listen to any complaint or any whisper of jealousy. Narses was recalled, but died before leaving Italy, and Longinus, who succeeded him, was sent too hurriedly to appreciate fully all the

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1. Paulus Diaconus II, 6. May these not have been the remnants of the Lombards who had remained in the old home on the Elbe, and had become identified with the Saxons?

2. The story, mentioned by Paulus, that Narses had sought the assistance of the Lombards against the intrigues and designs of his enemies at court is simply a Lombard tradition, to which no importance can be attached.

circumstances of the new command. He was sent to an army devoted to its late general, and the soldiers were only too ready to conspire against the new Exarch. This was not the state of things in which an army can best face a victorious and proud enemy. Alboin marched through the greater part of Italy, meeting with very little opposition, and Longinus was left only the painful duty of announcing to his imperial master the loss of provinces and cities. The Lombard king chose Pavia as the seat of his kingdom, and this city long remained the Lombard capital. But Alboin did not continue to enjoy the fruits of his conquest. He was murdered, the victim of his wife's revenge. After the victory over the Gepidae, he had married Rosamond, the daughter of Cunimond, the king of that people, whom he had killed. It was not uncommon among those barbarous tribes to turn the skull of a fallen enemy, a former chief, into a drinking bowl. At a feast near Verona, where the wine flowed too freely, Alboin called for the skull of Cunimond, the most prized ornament on his sideboard, and after its being drained by the circle of Lombard chiefs, he caused it to be filled again, and commanded it to be carried to Rosamond, with the request that she would drink joyfully with her father. She obeyed the command, but with the silent vow that the insult should be washed away in the blood of Alboin himself. Rosa-

mond was obliged to flee from the rage of the Lombards to the protection of the court at Ravenna, but she soon herself fell through the vengeance and jealousy of one of her lovers.

Clepho, one of the noblest of the Lombards, was elected successor to Alboin, but before eighteen months he too was murdered, a sad picture of the restless, undisciplined and savage character of the times. For ten years the royal office was suspended, and during the minority of Autharis, the son of Clepho, Italy was divided, and oppressed by a brutal aristocracy, which is spoken of as the Government of the Thirty Tyrants. It was during this period that the Lombards invaded South Gaul, and laid waste the country.

The Lombards subjugated the greater part of Italy, though the Exarch, representing the Eastern Emperor, still held his court at Ravenna, and exercised some authority over Rome and the Campagna, as also over the south of Italy, representing the old Magna Graecia. More than once was Rome threatened by the Lombards, while they planted colonies which became the important duchies of Beneventum, Spoleto and Capua.

It is somewhat difficult to gain any satisfactory knowledge of the relations of the Lombards with the Romans in Italy. Paulus Diaconus is our chief source of information, and his lan-

guage is often so ambiguous that it is almost impossible to determine his meaning. His history was written long after the period of which he treats, and he had often to depend on traditions which were not always reliable, and indeed his history is little else than a compilation.<sup>1</sup> There are several edicta issued by some of the kings which may be used to elucidate certain points, but which do not afford general information. These edicta, differ entirely from the *Edictum Theodorici*. This may be regarded as a codex or digest gathered from the old Roman laws, whereas the *Edictum Rotharis*, and the *Liutprandi Leges* and *Rachis Leges* are purely Gothic in their character, and show no trace of Roman influence. Gaup<sup>2</sup> classes the different collections of Gothic laws in four groups. He regards the Burgundian and Visigothic as sister laws, while he classes the Alamannian and Bavarian as another group, and combines the Frisian, the Saxon, including the Anglo-Saxon, and the Lombard together, and the Salian, the Ripurian and the Thuringian as forming still another group. The Lombard laws undoubtedly bear a close similarity to our own Anglo-Saxon, illustrating that

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1. Jacobi, *Die Quellen der Langobardengeschichte von Paulus Diaconus*, has very closely traced the dependence of Paulus on the several authorities, in many instances placing the passages in parallel columns. *Hartmann Geschichte Italiens im Mittelalter* B. II, s. 52 note.

2. *Das alte Gesetz der Thuringer*, s. 1-24.

immediate connection, which existed between those North Gothic or Scandinavian tribes before their separation,—a fact which is still further corroborated by a comparison of their constitutions and earlier religions. As to their religion, they alone were worshippers of Odin,<sup>1</sup> while the Edelingi of the Anglo-Saxons conformed to the Adalingi of the Lombards, who were priest nobles. In their numeration they both made use of the long hundred, the hundred and twenty or duodecimal system.<sup>2</sup> The Lombards were converted to Christianity in the Arian form, probably shortly after their settlement near the Danube, perhaps a hundred years before they had established themselves in Italy, but they do not seem to have wholly given up the worship of Odin. It was during the reign of Luitprand that their Christianity assumed a more definite character, and approached more closely to the faith of the Roman church.<sup>3</sup>

It was just at this period that the church be-

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1. Leo *Gesch. d. Ita. Staaten*. B. I, s. 53., thinks that he finds traces of the worship of Odin among the Bavarians, which he attributes to an early intercourse with the Lombards. I cannot, however, find any trace of Odin worship among the Bavarians, and it is doubtful if there was any close intercourse between the two tribes.

2. Baude di Vesme *Vic. di Prop. t. II*, ch. I. This mode of numeration, however, was perhaps not confined to the Anglo-Saxons and Lombards, though more common among them.

3. It was under Grimoald that the Lombards first embraced the orthodox faith of the Roman Church.

gan to acquire great power as well as extensive possessions. From the time of Constantine, donations from private individuals and public sources had increased the possessions of the church, which early came to be designated as *Patrimonium sacratum* or *Patrimonium St. Petri*. From the flight of Honorius to Ravenna and during the reign of his weak successors, the bishops of Rome had very greatly augmented their power, while the struggles with the Eastern Emperors, or with their representatives, the Exarchs of Ravenna, had tended to bring them into greater prominence; a position of which they were quite ready to take full advantage. It might seem that at the time of the invasion of the Lombards the influence and power of the church was very much restricted. It could receive no support from Constantinople, for all connection with the East was broken, and the north of Italy with the Campagna and part of the South was in possession of the Lombards, so that little more than the city itself remained independent. The epistles of Gregory I give us a painful picture of the desolation of the country, but also convey an idea of his marvellous personality, his wonderful vigilance, his power of command and his attention to the minutest details. He issued orders to the generals, he drew up the plans of the campaigns, he obtained knowledge of almost every design of the enemy, and he kept

the officers of the city, the generals and the bishops of the several dioceses on the alert against any threatening danger. At the same time he was seeking to extend the influence of the church, and even Britain was not so distant as to be removed from his anxious care. It was impossible that a man like Gregory, so firm, so vigilant, so independent and withal so careful, and with a marvelous capacity of adapting himself to the various positions in which he might be placed, should not stamp the impress of his own character upon the church of which he was the head. About the same time, the Iconoclastic contest was renewed under the Emperor Maurice, and the Roman church became finally separated from the Eastern, and refused also to acknowledge the authority of the Emperor. The mutual dependence of the two parties had in the past been quite evident. There is no doubt that the election of the Roman bishop had required the sanction of the Emperor,<sup>1</sup> while it might have been regarded as the duty of the Emperor to support the holder of the sacred office, whose election he had at least sanctioned. The Emperor too had claimed the oversight of the city's administration, and the naming of the city officials. On the other hand, in the struggle with the Ostrogoths, the Roman bishop was in-

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1. Baronius T. VIII, p. 5.

dispensable to the maintenance of the imperial power in the land. On more than one occasion were the imperial troops paid out of the ecclesiastical treasury at Rome, while indeed the military power at Rome passed under the control of the bishop.<sup>1</sup> The Emperor could not, therefore, attack the independence of the bishop, and the eyes of all Italians were now beginning to look to him as the great central power, ecclesiastical and civil, of the nation.

It is impossible to read the letters of Gregory, or the pages of Baronius, or of the *Vitae Pontificorum* in the several collections, or the *Regesta* edited by Jaffe, without feeling assured of the very great power which in the sixth and seventh centuries the Bishop of Rome was already exercising. At an earlier period, Milan and Ravenna might have put forth claims to supremacy. With the removal of the seat of Empire to Ravenna, the Bishop of Ravenna with the support of the Western Emperors, and afterwards of the Exarchs, did seek to assert his authority. Under Ambrose Milan acquired a great ecclesiastical dignity. She became the centre of all the missionary efforts of the Western church, and it is questionable whether the Bishop of Milan had not at one time a larger number of suffragans

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1. Baxmann die Politik der Päpste B. I, s. 87. Gregorovius Geschichte der Stadt Rom. B. II, s. 62. Epis. Gregorii, edit. Ewald et Hartman II, 7.

than had the Bishop of Rome. Both Ravenna and Milan continued for some time to exercise an independent jurisdiction, to hold independent territorial rights, and independently to levy church dues. But by the force of circumstances, and under the guidance of a succession of able pontiffs, Rome outdistanced all competitors, and even before Gregory her supremacy was no longer questionable. Henceforward the Roman bishop nominated the bishops to the various dioceses of the Western church, until the Gallican church asserted and maintained the right of electing her own bishops, subject, however, to the sanction of the king. But it was not merely in spiritual or ecclesiastical affairs that we may trace the growth of the power of the Roman bishops, but quite as much in temporal affairs, and in the establishment and augmentation of what was afterwards known as the papal states. In the provinces which after the invasion of the Lombards remained to the Empire, Gregory insisted on the administration by imperial officers being submitted to his approval,<sup>1</sup> and subsequent popes claimed a like privilege, though it was frequently disputed, and after the thirteenth century became difficult to enforce. In regard to the establishment of the Papal States, it will be remembered that the faithful had at different

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1. Baxmann, B. I. s. 86.

times made large grants. Several towns and fundi in the kingdom of Naples, in Sicily, in Sardinia and Tuscany, and still more important territories in Dalmatia, in the Cottian Alps, and in South Gaul, had been given to the church. It was, however, under Gregory II that the papacy received its first most important donation of territory. The pope had entered into friendly relations with Luitprand, the Lombard king, who, when he was engaged in war with the imperial Exarch, wrested from him the town of Sutri, and after holding it for five months made it over to the pope. Sugenheim calls this the first germ of the church states, Rome excepted.<sup>1</sup> A little later, when Zacharias occupied the papal chair, and renewed friendly relations with Luitprand, this Lombard king transferred to Rome the four cities of Amelia, Orta, Bomarzo and Bieda, which he had wrested from the Exarch.<sup>2</sup> It was in this way that the states of the church were gradually formed, and it shall be our purpose later to allude to the future growth in connection with the donations of the French and German kings.

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1. Sugenheim, *Geschichte der Entstehung und Ausbildung des Kirchen-Staates*, p. II.

2. *Liber Pontificatis*, edit Dúchesne, *vita Zacharii*, T. I, p. 428.

## LECTURE VIII.

### THE SETTLEMENT OF THE FRANKS IN GAUL. A GENERAL VIEW OF THE CIVILIZATION OF EUROPE.

I have in previous lectures tried to convey some idea of the movements of the several Gothic tribes that invaded the Empire. Somewhat diversified in character, and wanting in the true elements of cohesion, they, with the exception of the Lombards, the Burgundians and the Franks, failed to secure a permanent possession of the land which for a period they occupied. In time, however, both the Burgundians and the Lombards were overcome by the Franks, who were destined to play a very important part in the future history of Europe. The Franks were not a single tribe, but rather a congeries of tribes, of

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Books consulted :—Hist. Gregor Tur. con, Fredigar Waitz, Die Deutsche Verfassungsgeschichte B. I & II. Eichhorn, Deutsche Staats und Rechtsgeschichte B. I & II. Glasson Hist. du Droit et des Institutions de la France, t. II & III. Phillips Deutsche Reichs und Rechtsgeschichte, ch. I. Violet, Hist. des Inst. Politiques et Administratives de la France, t. I. Thierry, Recits des temps Merovingiens. Walter Corpus Juris Germanici, t. I. Pertz, Die Geschichte der Merowingischen Hausmeier. Giesebricht Die Geschichte der Deutschen Kaiserzeit, B. I, ch. I-IX. Flach, Les Origines del Ancienne France, t. I. Sismondi, Hist. des Francais, tom. I & II. Fauriel, Hist. de la Gaule Meridionale, t. I & II.

which the two principal were the Salii and the Ripuarii. But this confederation of Franks, when they first entered into contest with Rome, extended along the coast of the North Sea from the mouth of the Elbe to the Rhine, and up that river to where it is joined by the Main. On the East and South, they touched the confines of the Saxons and the Alamanni. Their early incursions into Roman territory from the middle of the third century were undoubtedly for the purpose of enriching themselves with the spoils of war, quite as much as of acquiring what land they could at the expense of the Empire. But they soon entertained the idea of taking possession of North Gaul, and each year they made incursions into that part of Roman territory. In the ever-increasing weakness of the Empire, these expeditions became not only more frequent but more successful, so that in the latter half of the fifth century a part of the Frankish confederacy was firmly established in the north of Gaul, and soon extended further south till the greater part of Gaul became subject to it. The tribe of the Salii was certainly regarded as the most noble, and from it the royal race sprang, and the other tribes apparently ranged themselves under it.<sup>1</sup> It is dif-

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1. Waitz has classified the different Frankish tribes and traced how gradually they were brought into subjection to the Salii.

difficult to say when these tribes became united under the one name of the Franks, and it is equally difficult to determine what the name really at first implied. The earliest of the Frankish kings known to history is Clovis, who belonged to the tribe, or rather the family, of the Merowigs, who have given their name to the first Frankish dynasty, the Merovingian. Of Merowig or Merovech, the father of the family, we know very little, and not much more is known of his son, Chilperic.<sup>1</sup> He appears to have been at one time an ally of the Romans, who still held a position in Gaul, and with them to have driven back the Visigoths as well as the Saxons and the Alamanni,<sup>1</sup> and for the assistance which he rendered he seems to have been honoured with the title of *Magister Militum*. He married Basina, of the Royal Family of the Thuringians, and Clovis was the child of that marriage. The Franks were still not united; two or more divided the power with Chilperic, and when Clovis came to the throne, by right of succession and not by election,<sup>2</sup> it was as king of North Gaul, with his seat at Tournay. Clovis, however, succeeded in forming an alliance with

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1. Junghaus, *Hist. Crit. des Regnes de Chilperic et de Chlodovech*. tr. par Monod.

2. *Gregor. Tur. II*, 27, *Mortuo Childerico, regnavit Clodovechus filius ejus pro eo. De functo Chlodovecho quatuor filii ejus accipiunt, et inter eos aqua lance dividunt.*

several of the other Frankish tribes, and with the united force gave battle to Syagrius, whom he defeated, and with his defeat Rome lost her last hold on Gaul. This battle established the power of Clovis, and made the other tribes subject to him. Clovis connected himself with Burgundy for he married Chlotilda, a Burgundian Princess. Through her influence he was led to embrace Christianity, and under the spiritual direction of Remigius, Bishop of Rheims, he accepted the orthodox Catholic faith. He was the only orthodox sovereign in Western Christendom, for the Ostrogothic Theodoric of Italy, the Visigothic and Burgundian kings in France, the Suevian in Spain, and the Vandal in Africa were all Arians. The Church of Rome, therefore, rejoiced in the conversion of Clovis, and regarded him as the champion of the orthodox faith. He was commissioned to carry out the purposes of the church, and if necessary by force of arms to bring the wandering Arians into the fold of the true church. Clovis, thus commissioned, declared war against the Burgundians and Visigoths, subdued them, and thus extended his authority over the whole of Gaul. Clovis was marked by many of the characteristics of a barbarian chief. He was fierce, impulsive, and cruel, and his adoption of Christianity had little softening influence on his naturally rugged character, and many

of his worst deeds were done under the shield of religion. Nevertheless, it was he who firmly established the power of the Franks in Gaul, and gave it some measure of consistency. But Clovis was cast in the true mould of a conqueror, and his subjugation of Roman and Gaulish as well as Burgundian and Visigothic chiefs, who were opposed to him, was often accompanied with treachery and death, and if his conquests were glorious his ambition was by no means scrupulous as to how it reached its end. All the glory of the Merovingian dynasty centres in him, for his successors very early abandoned themselves to all the evils which had stained the closing years of the Empire, and the functions of royalty reduced themselves to guarding the treasures which had too often been acquired by pillage. The kingdom of the Franks soon became divided into two parts, Neustria or the western part, having its capitals at Paris and Soissons, and covering nearly the whole of modern France, and Austrasia or the eastern part, with Metz as its capital, stretching across the Rhine and resting on Burgundy in the south, which though conquered by Clovis had reacquired some measure of independence. These kingdoms, however, changed very much, according to the fortunes of war, and through the intrigues which constantly prevailed during the whole of the

Merovingian period. Eight times within a century and a half was the kingdom of the Franks divided and re-divided. Three times was it reunited, but only for a few years, under one king. But Neustria or the western, and Austrasia or the eastern division, may be regarded, and indeed were sometimes regarded as marking two distinct nationalities, as the one consisted largely of a Latin population, while the other was almost purely Teutonic; and so they are sometimes called by contemporary writers *Francia Romana* and *Francia Teutonica*. Before the end of the seventh century, we find a power beginning to make its influence felt in the Frankish kingdom, the power of the Mayors of the Palace.<sup>1</sup> This office may probably have existed for a long time; in fact, may have been coterminous with the royal power itself. The Mayor of the Palace was the first among the officers of the court, and to him was committed the internal management of the State, as well as the conduct of the army in war. In the weakness of the later Merovingians, such an office would grow in importance and exercise a wide influence, and we find that both in Neustria and Austrasia, as well as in Burgundy, the power of the state passed almost wholly into the hands of the

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1; Pertz *Die Geschichte der Merovingischen Hausmeier*.

Mayors of the Palace. These officers had been appointed by the king, but in the later period of the Merovingian dynasty they were elected by the nobles and the clergy, and naturally inclined to the interests of those to whom they were indebted for their election. The later members of the dynasty pass rapidly before us, and the period is marked by crimes, by intrigues, and ferocious quarrels. Two queens, Fredigand and Brunichild, are especially distinguished by their jealousy and hatred, leading to the most atrocious cruelty. Fredigand caused the murder of her husband and brother-in-law, while Brunichild is said to have destroyed no less than ten Frankish princes. These intrigues and crimes more than ever alienated the nobles, lay and clerical, from the royal house, and afforded an opportunity to the Mayors of the Palace of assuming greater importance and power. The Eastern Mayors, who were, or who became Dukes of Austrasia, were all of them united by family ties. Arnulf, who became Bishop of Metz, Pippin of Landen, and Pippin of Heristal were men of striking prudence and force of character, and at once acquired a dignified position in the respect and the good-will of the Franks. A bitter contest broke out between Austrasia and Neustria, in which Austrasia was completely successful, and for the next two generations the Teutonic or

German element prevailed over the Latin in the Frankish kingdom. The Mayors of Austrasia were very faithful to the kings of the line of Clovis, who still filled the throne, though they could not be said to rule the kingdom. It was the aim of Arnulf and the Pippins to unite the two divisions of the kingdom in their political and social interests, and for this purpose they sought the aid of the church. The presence of a common enemy, the Saracens, who through Spain had penetrated into Southern France, tended to bind the parts of the kingdom in a common defence, and Charles, the son of the second Pippin, who succeeded his father as Mayor of the Palace, encountered the great danger which not only threatened France but all Europe. He defeated the Saracens in a great battle at Tours, and gave a decided check to the Saracenic invasion of the west. Having succeeded in restoring harmony in France, he aided the head of the church in Italy in resisting the claims of the Emperor, and of the eastern church, and in opposing the encroachments of the Lombards. This was the beginning of that close alliance between the Frankish kingdom and the Roman church, which has ever since so largely influenced the destiny of both these great powers. Charles, who for his great victory over the Saracens, and for his personal prowess, received the surname of Martel or the

Hammerer, though content to remain as Mayor of the Palace, has been sometimes called the founder of the second Frankish kingdom, **for he re-established it, and under him it reached** an extent, a dignity and importance to which it had not previously attained. He was succeeded by his second son, Pippin, known to history as Pippin le Bref. It was not to be expected that the fiction of a monarchy which had lasted for upwards of a century could any longer continue. Is it not sometimes well that weak kings should be overthrown? They are never a benefit, and it does not become us too closely to criticise the means by which a dynasty is overthrown, or to examine too closely into the justice of a usurpation. In this instance, the usurpation was sanctioned if not urged by the church. With the consent, some say by the advice, of Pope Zacharias, Chilperic, the last of the Merovingian Princes, was deposed, and his crown placed by Boniface, Archbishop of Maintz, on the head of Pippin, Mayor of the Palace, but now become the first king of the second Frankish dynasty, the Carolingian. The support of the church in this usurpation was amply recompensed by Pippin, who assigned to the clergy of his kingdom the first place in the national council, while he bestowed certain territories on the papacy. He enlarged his dominions, and left them on his death to be divid-

ed between his sons, Carloman and Charles. Carloman only survived his father by three years, when Charles, better known as Charlemagne, became the sole monarch of the Frankish kingdom. A reputation almost approaching the fabulous attaches to this truly wonderful man. It is certain that he extended the Empire almost to the bounds of Europe, and reigned over nearly the whole continent, from the Elbe to the Ebro, from the Danube to the Adriatic from the Alps to Beneventum. The Merovingian dynasty is completely clouded by the glory which attaches to the earlier kings of the Carolingian line. Gregory of Tours is our great authority for the period of the earlier dynasty, but there is so little attractive in that period of French history that very few care to disinter the story of a line of kings to whom only a kind of funereal pomp belonged. Augustin Thierry has revived their history, but the attraction which he has lent it is due mainly to his facile pen. But though no interest attaches to the Merovingian dynasty, and we find little more than a list of kings without any merit, passing from almost savage rudeness to the vices which degraded the civilization of the closing Empire, spending their time and the treasure, which they had acquired through pillage, in effeminate luxury, and thinking little of the general condition or the welfare of the

state. Still, it is an important period of European history. It furnishes the opportunity of studying the change from the civilization of the old Empire to the peculiarities of modern civilization, and of examining the conditions upon which the most perfect system of feudalism was founded. In this period also we may discover in their earlier features the great principles which the French nation had to work out in the course of its lengthened history. The accession of Charles marks a distinct period, not only because he gave strength and dignity to a new Frankish dynasty; or that he marks the temporary supremacy of the Teutonic element; or that we are brought into the consideration of larger ideas of state policy; or that we begin to read the interrelations which are commencing to spring up among nations; or that we now have the founding of the Holy Roman Empire, by which for so many centuries the church of Rome became so closely connected with the imperial power and their interests almost inseparably interwoven, but also because our means of knowledge become not only very much more extensive, but also more accurate. We have a biography of Charles, written by a contemporary, and a series of annals which give details of time and place with an accuracy before unknown, as also a collection of acts of government and legislation, besides a large number of letters from the princi-

pal actors of the period, and we are able, therefore, to form a truer idea of Charlemagne's character and prowess. He conquered the nations around, as the Saxons and the Burgundians, and extended the kingdom to the Danube. He introduced a new system of judicature and established courts throughout the Empire. He gave a preponderance to the German element, and his edicts were generally issued in the German language.

Charlemagne had seven sons, three of whom entered the priesthood, and among the remaining four he divided his kingdom. But before his death Charles had the pain of following many of them to the grave, and Louis, known to history as Louis le Debonnaire, remained sole heir of his extensive dominions. It is easy to believe that in the original division of his Empire, Charles was guided, not merely by the practice which had prevailed with his predecessors, but by motives of real policy. He felt that his dominions were too vast to remain long united under one head, and were certain, sooner or later, to break up into several parts. Who so likely as brothers to maintain friendly relations, or to unite against a common enemy? Louis, to whom the united Empire did in the changed circumstances fall, had very few of the stronger traits of his father's character. He had neither Charlemagne's martial bearing, nor his pru-

dence in counsel, and his *debonnairété* was simply the affability of a weak and kindly disposition. Louis in his youth had enjoyed all the advantages which the age could give. He mounted the throne in the maturity of manhood, in his thirty-sixth year. But he lacked all the qualities of a sovereign; he was weak in character and wanted energy; and what were called his virtues by an obsequious court were simply weaknesses, which made him a tool in the hands of his stronger minded but intriguing and unprincipled courtiers. His *debonnairété* made him entirely dependent on his spiritual advisers, who exercised their influence in inducing him to grant unlimited privileges and very extensive gifts of landed property to the bishops and religious houses. Under Charlemagne, the Austrasian or the Teutonic element had become the greater, but Louis inclined to the Roman. He had grown up in Aquitaine, and his early manhood had been spent there under the influence of Latin priests, and in the midst of a Latin population. Perhaps to this he owed his lifelong devotion to the interests of the church, and his entire subserviency to its dictates. It was natural that the church should prefer that the succession to the throne should not be divided, but that it should pass to the eldest son. In accordance with that wish Louis intended that his eldest son Lothaire should succeed him.

But the practice of dividing the inheritance had so long been followed that the younger sons, Louis and Pippin, urged their claims each to a portion of the territory, and Bernard, the nephew, claimed Italy as the descendant of Pippin, to whom Charles had given it. Bernard took up arms to maintain his claim, but his revolt was suppressed. Louis, the father, had by his second marriage with the Guelphic Judith a fourth son, who became the father's favourite, and a new division of the Empire was made, giving the fourth son, Charles, the lion's share. The other sons took up arms against the father, who fell into their hands, and ultimately there was a treaty agreed upon at Verdun, by which the Empire was partitioned among the brothers. The treaty of Verdun forms one of the most important landmarks in history. The Teutonic principle of equal division among the heirs once again prevailed over the Roman, the transmission of the kingdom through one. Charles, the child of the second marriage of Louis, known to history as Charles the Bald, received as his portion the western country as far south as the Spanish marches, virtually the old Neustria, territorial France, while Louis received Austrasia as far north and east as Charlemagne's power extended. Lothaire's kingdom lay between these two territories, and as none disputed his position as

Emperor, so it was felt that his kingdom should rest on Italy and Rome, while the dignity of Charlemagne and the usages of government entitled Lothaire to demand Aix-la-Chappelle, Charlemagne's royal residence. These two imperial cities, therefore, were conjoined by an unbroken line of territory stretching across the continent from north to south, from the floods of the northern ocean and the sands of Frisia to the luxurious region of Capua and the olive and chestnut groves of the Abruzzi. This was Lothaire's kingdom, so limited in its latitude, so ample in its longitude, so rich in its associations, so varied and magnificent in its scenery, so changeable in its climate, mingling the perpetual snow of the Alps with the heat of the Campagna, touching the mild waters of the Tyrrhenian and Mediterranean seas at the south, and the frigid ocean at the north, this was the original Lorraine, Lotharii Regnum, Lotharingia.<sup>1</sup> No provision was made for Pippin's Aquitanian line.<sup>2</sup> Pippin II. by turn, king, pretender, monk and pirate, married but childless, died at length in prison, and his brother Charles, persecuted into religious orders, became archbishop

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1. - Palgrave Hist. Normandy and England, vol. I, p. 342. Calmet, Hist de Lorraine, tom. I, p 680. Schoepflin Alsatia Illustrata, tom. I, Sismondi, Hist. des Français, tom. III, p. 77.

2. Pippin the brother, received Aquitaine but shortly died.

of Maintz. The line was thus early extinguished, and the kingdom of Aquitaine, the old Visigothic kingdom of South France, passed over to Charles the Bald, and became a part of the French kingdom.

By the Treaty of Verdun the distinction between France and Germany was henceforth decided. Charles' kingdom was territorial France, much as it was in the days of Louis XIV, or rather, much as it is to-day, when the greater part of Alsace and Lorraine have been lost. From this time the French character and language went on developing themselves in their distinctive features. Charlemagne was in all respects a German. The language of his court was German, and in German were most of his edicts issued. Henceforward the *lingua Franca* with its two dialects, the *langue d'oc* of the south and the *langue d'oïl* of the north assumed more and more their distinctive features. Louis le Germanique, rather than Charles the Bald, was Charlemagne's successor, for with him was the language and the policy of Charlemagne continued. But perhaps Lothaire, the Emperor, king of that Lorraine territory, with one foot at Rome and the other hundreds of miles off in the old schloss of Aix-la-Chapelle, has a better claim to be considered the representative of the great Charles, his grandfather. In time, however, this much-coveted Lorraine

territory passed over to Germany, though it has been the object of contention from that day to this. Several times has it been part of France, but has ever and again reverted to Germany. It became divided in the tenth century. The Italian part passed into the possession of the Lombard kings, while the northern portion or Lower Lorraine became part of Flanders, then of Burgundy, and later of Belgium, and the German Palatinates of the Rhine.

With the Treaty of Verdun we enter on a new phase of European history, and it may be, therefore, proper to consider the position of the countries of Europe at that time. In the East, the Empire still existed in considerable force. Since the struggle under Leo the Isaurian, the Eastern Empire had become more and more a Greek kingdom. Under that able Emperor, it recovered much of its old dignity and glory. He encouraged learning and the arts; he strengthened the position of the eastern portion of the church, and by his crusades against image worship he brought about the ultimate separation from the western church. The distinction between the eastern and western civilization was never more distinct than now, the final result of the political error committed by Constantine. Only during the crusades, and the short-lived sovereignty of Venice over the east, was there afterwards any regular commu-

nication between the two portions of the old Empire. Eastern civilization struggled on a little longer, till it yielded to the Ottoman Turks, when Constantinople became the proud capital of the Ottoman Empire, and the church of St. Sophia, the most beautiful example of Byzantine architecture, was converted into a Mohammedan mosque. It was the Latin church which inherited the characteristic features of the old Empire, and like it aimed at the temporal as well as spiritual sovereignty of the world, or at least claimed that the secular powers should carry out her plans and purposes. To the north of Greece there were a number of small Slavonic kingdoms, which, however, have exercised little influence on the development of European civilization. Russia has always had a very mixed population; Finns and Mongols, Slavs, Germans and Lithuanians form part of her population, and only within a century or two has she played any part in European history. Only five countries may be said to have influenced the general development of Europe, Italy, Spain, France, Germany and England. But in a course of lectures on History like this, it is impossible to detail the history of each of these, and I therefore purpose to single out France as the country whose development has been of the most general character, and whose influence has been the widest. It would

be impossible to give a detailed history of any one country, still less of all the countries of Europe. A course of lectures on such a wide subject would take as many years as we have months at our disposal, and we must, therefore, content ourselves with seeking to get a general idea of the development of the civilization of Europe, and we therefore purpose to consider the development of civilization in one of these five countries mentioned, and to compare with this the more striking or the more divergent features in the civilization of the other countries. This will save time, besides that contrasts or comparisons, when they are clearly presented, impress the mind more easily as well as more forcibly. The question may be asked in the first place, what is civilization? Civilization is the advancement of a people in education, in morality, and in general comfort and happiness. All these form parts of civilization. Whatever adds to the comfort and happiness, to the intellectual and moral elevation of a people, improves their civilization. Now Italy, Spain, France, Germany and England may be considered as having each its phase of civilization. If, for instance, civilization be regarded as consisting in the cultivation of the fine arts, painting, sculpture, poetry, and we may add architecture, then we may undoubtedly assign the first place to Italy, and next to Spain. Italy has had her

famous poets, Dante, Petrarch and Ariosto, and her dramatists, such as Alfieri, and her many schools of painting at Rome, Venice, Florence, Bologna and Milan. The works of art which have been produced by these schools have never been surpassed, but like Greek sculpture can only be imitated. The frescoes of Michael Angelo, the paintings of Raffael, or Corregio, or Perugino, or of Leonardo de Vinci, may be copied, they can scarcely be excelled. Spain also had her schools of the fine arts, of painting and architecture, and her famous poets, but it is quite possible that it was the want of an opportunity to develop a higher civilization which turned the minds of the Italians and Spaniards to the cultivation of the fine arts, and gave occasion to it. But from the fall of Rome to the present time it cannot be said that Italy has had a settled government. There was no consistent progress, no unity in the Italy of the Middle Ages. Now overrun by France and then by Germany, torn by faction, divided between Guelph and Ghibelline, the whole peninsula from the Alps to Tarentum was cut up into ever so many petty republics or petty monarchies. It is true that Rome has outlived all the changes, and may still be regarded as the representative of the Rome of the old Empire. But he who still occupies the Vatican claims to be the successor

not of the Cæsars but of St. Peter. As head of the church he still seeks to exercise the temporal authority, but he has never assumed imperial power, and has been content to do fealty to a Charlemagne, or to an Otto as the acknowledged head of the Holy Roman Empire. Charlemagne received the imperial crown on Christmas day, 800, and was duly recognized as the successor of the Cæsars and of Augustus. When, however, the descendants of Charlemagne proved themselves unable to uphold the glory of his great name, and of the power which he established, the imperial dignity was transferred to the German house. The pope still needed the support of the secular arm, and in the weakness of the later Carolingians, who were unable to defend themselves either against the aggressive power of the Germans or against their own barons, he was obliged to turn to the German king. The Saxon Otho was proclaimed Cæsar, invested with the imperial purple, and crowned Emperor Augustus. And now the Italian interests became closely bound up with the interests of Germany, and there was no independent development of Italian life, political, social, or constitutional. In the north, some one or other of the Gothic tribes held sovereign power till the Lombards came to exercise more permanent dominion, or till the establishment of independent republics,

while for a long time the eastern Emperor had his representative at Ravenna. In the centre of Italy, Rome continued to exercise some authority, though the Goths or the generals of the Eastern Empire, the Lombards or the German emperors, were ever and again besieging the eternal city. In the south, till the ninth century, the Emperors of the East held almost entire sway, except over the Lombard duchies of Capua, Beneventum and Spoleto. Shortly afterwards, the Normans established themselves in the two Sicilies, and on their decline the rival houses of Aragon and Anjou fought bitterly for the coveted possessions. Thus Italy was never so united as to develop a distinct civilization. The prey of foreign invaders, or torn by internal intrigues, her history presents a perfect maze of discordant elements.

Spain has certainly not been marked by any very high civilization. The long contests with the Moors and the settlement of a strong Mohammedan power in the south of Spain, with the admixture of Moorish with Visigothic and Celtic blood, has largely affected the progress of Spain. She too has developed her schools of painting and her famous poets; she had also her popular assemblies, and acquired wealth and was distinguished by enterprise, yet she did not make any marked progress in higher civilization. Her advance reached its limit in the six-

teenth century. Since then she has retrograded, or at least become stagnant. The principal cause of this has been the want of a proper dissemination of learning among all classes, due in a large measure to the prejudicial influence of the Roman church. Her fine paintings, her beautiful architecture, remain to show her advance in the fine arts, but to this day her people remain largely uneducated, and Spain is not likely ever again to take a prominent place among the nations of Europe. In considering the history of Italy and Spain, then, we find that while there has been a large development of art, and for a time a rapid accumulation of wealth, there has been really little advance towards a high civilization. We find the rapid rise and as rapid fall of governments, but an utter want of stability, of social security or of political harmony; there has been a rapid rise of literature, but it has been an evanescent bloom, charmingly beautiful for a time and full of promise, but shortly to stagnate. We see the upper classes of society in the enjoyment of wealth, but without the ease or the comfort which wealth should give, and there appears to have been no unity of purpose nor of action. Throughout the whole of the Middle Ages this was the state of Italy; never until now has there been any stable government or any united action.

- But still less than in the case of Italy

or Spain are we attracted by the development of German civilization throughout the Middle Ages. She, too, has not been a united country. Various elements have here been at work. Swabian, Austrian, Franconian, Saxon and Prussian influences have ever and again changed the current of German civilization. Till the ninth century, Germany was closely united to France, and up to that time the chief features of German civilization existed in France in more complete development. From the accession of the first Otto to the imperial throne, the history of Germany became inseparable from that of Italy, and it was much affected by Italian influences. Roman law became the law of the Empire, and the German code was based on the Pandects of Justinian. Perhaps still less than to Italy, or even Spain, can we look to Germany with the hope of finding a distinct or leading type of civilization. It is quite true that within the last century, or perhaps we may extend it to the middle of the previous century, a new life has been developed in Germany, but this is too late for our present consideration. Germany then can scarcely be said to have developed an early, distinct civilization. It was too closely connected with Italy, and through the relations of the Holy Roman Empire its independent character was circumscribed. The Reformation did indeed bring about a change, but it

separated between the north and south, so that there was still less unity than before. The south, more than ever, seemed to lean to the Roman church, while North Germany tended to a wider separation from Italy and Rome, and to develop a more distinct civilization, a civilization more Teutonic in its character, and the later schools of German thought have had a decided influence on the other countries of Europe. Still Germany has only slightly affected the general course of the social and political development of Europe, and throughout the Middle Ages it developed no distinct features either of the Feudal System, or of the growth of monarchy, or of a representative government.

England has remained too much isolated. Her civilization may be higher than that of any other part of Europe, and her people enjoy a larger freedom. If her wealth is not so equally distributed as in several other countries, yet her extended manufacturing interests, her wider range of trade and commerce, and her larger colonial development, the general dissemination of learning, the freedom of opinion in religion or politics, the admirable system of representative government, and the responsibility of ministers which began to develop itself even under Angevin rule, all these are admirable features in British civilization, yet throughout the whole of the Middle Ages England was too isolated.

Her connection with France through Normandy was rather hostile, and neither country was likely to be influenced by the other's civilization. It was not till the reign of Henry VII that England took any part in the political affairs of Europe. I wish to trace the gradual development of European civilization from the close of the Western Empire, and no country presents material for this better than France, which is indeed the heir to the main characteristics of the old Roman civilization. Her language is Romance, her laws are virtually based on the Pandects of Justinian, and her government has partaken largely of the arbitrary character of the Roman Empire. I shall attempt, therefore, to follow the main characteristics of Mediaeval civilization as they developed themselves in France, and as the occasion offers will contrast them with similar or different features in the development of the civilization of the other countries of Europe.

## LECTURE IX.

### FRANCE UNDER THE MEROVINGIANS. THE GOTHIC LEGAL CODES.

In attempting to picture to ourselves the condition of the Franks and of their settlement in Gaul we have one of the most difficult problems which history presents, because we have to deal with facts which are very complex, and regarding which our information is not always clear. It will not be sufficient to study Roman

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Authorities consulted : Caesar *De Bello Gallico*. Tacitus, *Germania*. Ammianus Marcellinus. Procopius *De Bello Gothico*. Jornandes *De Rebus Gestis*. Gregorii Turonensis *Hist*, 1 and Fredegar's Continuation. Guerard, *Polyptyque del Abbé Irminon*. Walter, *Corpus Juris Germanici Antiqui*. Lex Salica, edit. Merkel et Grimm. Le Loi Salique edit. Pardessus. Giesebrecht's *Geschichte der Deutschen Kaiserzeit B. I.* Roth, *Beneficialwesen, and Feudalitat und Unterthanenverband*. Sohm's *Altdeutsche Reichs und Gerichtsverfassung*. Waitz, *Deutsche Verfassungsgeschichte b. I & II*. Rosiere, *Formules dans Empire des Francs*, vol. I. & II. Guizot's *Histoire du Civilization en Europe* ; and his *Assais sur l'Histoire de France*. Flach, *L'Ancienne France*. Giraud, *Droit Francais en Moyen Age*. Glasson *Hist. du droit et des Institutions de la France*. Eichhorn, *Rechtsgeschichte*. Fustel de Coulanges *L'Invasion Germanique, et la Monarchie Francaise*. Longnon, *Atlas Hist. de la France*. *Capitularia Regum Francorum* edit. Stephanus Baluzius.

institutions and customs and laws, nor German institutions, customs and laws, nor indeed the political and social life of either people. Both had undergone very great and important changes in the previous three or four centuries, and it will be necessary to understand as far as possible the nature of these changes. The settlement of the Franks in Gaul extended over a long period. In Cæsar's narrative of the Gallic wars, we for the first time gather any knowledge of the Germans, and in the first century they came into conflict with the armies of the Empire. It was in 241 that the Franks in their separate existence made their presence felt on the outskirts of Gaul, and were defeated by Aurelian in the neighborhood of Maintz. From that time they passed further into Gaul, but it was not till three centuries after that the Frankish kingdom was established under Clovis. It is quite certain that in that long period, during which the Franks were in more or less close relation with the Romans, their institutions and their modes of life must have undergone a change. The natural tendency of barbarians is to assimilate themselves to some extent to the life and character of a higher civilization with which they may be brought in contact. Under these circumstances, the account given us by Cæsar and by Tacitus can throw only a partial light on the institutions and mode of life at the

time of Clovis. But though the German institutions as known to Cæsar and Tacitus may have undergone a great change, and may have been much modified by a long familiarity with Roman institutions, still it will not be well to leave entirely out of consideration the representation which these writers give us of the earlier German institutions. Cæsar's narrative is in many respects indistinct as well as incomplete, and we are led to believe that the Germans when Cæsar knew them were in a state of transition. The account given by Tacitus in his *Germania* is in every respect more valuable, as it is more accurate, more distinct, more full and marked by a broader spirit.<sup>1</sup> We learn from Tacitus that among the Germans of his day agriculture had made some advance. The Mark system appears to have prevailed throughout the greater part of Germany, the village settlements had become permanent, and the dwellings somewhat substantial and extensive,<sup>2</sup> though we do read of families and even tribes changing their abode from one part of the country to another. But though the land was held in common there were still different social ranks. There were nobles, freemen, freed-men and serfs, as there were

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1. Von Sybel is inclined to give a preference to Cæsar's narrative.

2. Tacitus, *Germania*, ch. XXV. & XXVI.

also kings, princes and priests.<sup>1</sup> The nobles were so by descent, but the kings were chosen by the people from the nobles. Tacitus also mentions that the kings and the chief warriors drew to themselves bands of young men whom they provided with horses, arms and such other equipments as they might require. In time of war, these men—*comites*—formed a group around the chief they had chosen. They were the rivals of his prowess, and it was a disgrace for the chief to be surpassed by his *comites*, as it was an equal disgrace for them not to equal his exploits, and a perpetual infamy to return from the field on which he may have fallen. However this custom may have existed when Tacitus wrote, and there is no doubt that such a custom did exist among the Teutonic tribes generally, though it is by no means certain that the custom was so prevalent as Tacitus is disposed to think. Cæsar does not allude to it; he never once mentions the *comitatus*; he never speaks of the Germans fighting in separate bands under different chiefs. He represents the army of Ariovistus as consisting of a hundred and twenty thousand men acting immediately under the orders of Ariovistus, whom Cæsar calls their king, and who exercised complete authority over his army. This unity of power naturally seems

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1. Tacitus *German*, ch. VII. *Reges, Principes, et Sacerdotes.*

opposed to the idea of numerous bands not always acting in unison.

Ammianus Marcellinus is an historian who retails much of the minutiae of history. He was an officer serving in Gaul at the time when Gundomar and Vadomar, kings of the Alamanni, were invading the province, and he would be in a position to know the character of the German army, but he too never once alludes to the *comitatus*. Bethmann-Holweg seems to see in the princes mentioned by Marcellinus, and who were attached to the kings, a *comitatus*, but they were simply a bodyguard.

Procopius wrote two works, one a history of the war with the Vandals, and the other of the war with the Goths. He was a man of high Roman culture, and of extensive information. He was attached to the army of Belisarius, and in his narrative of the war with the Vandals he gives some details of the army composed of Vandals and Alans. He was sufficiently observant to remark any peculiarities in the constitution of the Vandal army, and he represents the king of the Vandals as exercising unlimited authority, but makes no mention whatever of a *comitatus*. In his narrative of the Gothic wars, he had occasion more than once to describe the Roman army as well as that under the Gothic leader, and he would certainly have noted any striking difference of formation or of discip-

line. In the last battle between Narses and Totilas, he evidently represents the army of the Goths as united under the command of the king.

Joruan-des was a Goth, evidently a man of education and culture, connected with a noble family of the Alans. He must have been perfectly acquainted with the manners and customs of the Goths, and in the earlier chapters of his history he mentions many of their peculiar customs. He speaks of large armies of seventy thousand men marshaled under one commander, but he makes no allusion to a body of troops like the *comitatus* of Tacitus. It is certain that such a custom did exist among the Teutonic tribes, in the earlier period of history, for there is frequent mention of it in the earlier sagas, but there is every reason to believe that it had ceased to be prevalent in the armies that invaded the provinces of the Empire, and there is no ground whatever for thinking, as Guizot and others do, that the settlement of the Franks in Gaul, or indeed of any of the Goths, was in independent groups of the chief and his *comites*, among whom he divided the land, or where rather they cast lots for the divisions of the land.

The growth of kingship is quite natural. It is associated at first with military leadership. The king was the leader of the army, and this position of authority, and this exercise of power

would become more and more associated with dignity, and at the same time become more and more a personal right. We have no means of determining the exact state of authority exercised by Ariovistus, but in the subsequent wars between the several Teutonic tribes and the Romans, the Roman armies were marshalled under the leadership of one man, whether he were the Emperor himself or his duly appointed lieutenant. This unity of command on the side of the Romans could only be met by unity of command among the Germans, and in the long contests it would become more and more evident that their only hope of success was by holding to one strong guiding power. But having led his people to conquest, overthrown the Roman power, and retained possession of extensive and rich territory, it would be very difficult for the leader to lay aside the power which he had gained. It would soon be found that the same unity of power which had led to victory would be equally necessary in order to retain and defend the possession which had been won, and still more to administer the political affairs of the newly established state. In the petty tribal contests of the Goths with one another it was quite natural that their little armies should have been composed of a chief and his comites, but it was very different when they had to contend

with the great forces of an Empire, or when their tribal constitutions had to give way to the formation and administration of great states. But the military and the civil power were naturally closely associated, for the king had not only the command of the army, but in his hands was also vested the full exercise of civil authority, with the administration of justice, and he in course of time became the source of all power. But royalty having gained in consistency and power, gained also in permanency, and what may at one time have been elective, as Tacitus states, tended to become hereditary. It had become hereditary before Clovis.<sup>1</sup> He succeeded without dispute to his father, Chilperic, and on his death the kingship passed to his sons.<sup>2</sup> Clovis exercised full military power; he led the armies to the acquisition of new territory, and the whole administration of the kingdom devolved

1. Tardiff, Viollet, Junghaus and others, maintained that the kingship remained elective, and Viollet strangely alludes to the fact that Clovis was elected to succeed Sigebert king of the Ripuarians, and implies that this was succession in the regular line. But as Clovis himself says, the son had the right of succeeding to Sigebert, the king of the Ripuarians. "Recte tibi regnum illius reddetur." But both father and son having been murdered the throne became vacant, and Clovis was elected. He did not belong to the line of the Ripuarian kings, and had no hereditary right to the throne. Viollet's argument then is worthless.

2. Gregor. Tur. II, 27, Mortuo Childerico, regnavit Clodovechus filius ejus pro eo. Defuncto Chlodovecho quatuor filii ejus accipiunt, et inter eos aqua lance dividuunt.

on him. He distributed the land, declared the law, administered justice, appointed all officials, and after the establishment of Christianity nominated the bishops.<sup>1</sup> As his military authority gradually passed over to his civil, the *Dux Francorum* became *Rex Francorum*, and his kingly power was over the people rather than over the land. As he extended his conquests the conquered submitted to him. He was personally the uniting power which had brought the several tribes together, and now kept them united. Those who yielded lost their distinctive name; they became *Franci* and their land was absorbed and became part of *Francia*. Even that part of the population which might still be regarded as Roman, and retained some of their old Roman privileges, yet now lost their distinctive nationality, and were incorporated into the *Regnum Francorum*, acknowledging the same royal master as did the Franks. We have noticed that all, or nearly all, the Gothic tribes that established themselves in Italy, following the Roman practice, took a third of the land as well as of the slaves or serfs attached to it. But it is doubtful if the same system was followed by the Franks. Certainly there is no statement of any such division of land in their case. The con-

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1. How far the king might carry his arbitrary powers may be learned from the gruesome picture presented by Gregory of Tours. T. VI, chs. 44 & 45.

quest by the Franks differed in some respects from the conquest by the Ostrogoths, or by the Lombards. These effected settlements only in part of the land, and all Italy did not become subject to them. They were surrounded by a Roman population, and it is impossible to say even in the part which became subject to the Ostrogoth or the Lombard kings, what proportion of the inhabitants still remained Roman. But though the whole territory of Gaul became subject to the king of the Franks, yet as I have said, the kingdom admitted of a division into the *Francia Romana* and the *Francia Teutonica*. The *Francia Romana* had been peopled by a Gallo-Roman population, and whether any part of this territory was really alienated by the Franks it is impossible to say. The whole became subject to Clovis, but how far the original holders of the land were dispossessed we have no means of determining. All our information is gathered from incidental notices; thus we learn that in some of the towns in the time of Clovis, or shortly after, the majority of the inhabitants were Franks. But we also learn that most of the grants to monasteries made during the Merovingian period were of waste lands, or places which since the decline of Rome had fallen into ruin. Thus Clovis II. granted to the monk Frodabart a piece of land which was uncultivated in the

neighborhood of Troyes, and the cloister of Weissenburg was erected on the site of old Roman baths which had fallen into ruin. From this we gain the impression that while many of the old inhabitants may have left the towns they were as a rule little interfered with, and that little if any of the cultivated land was alienated.<sup>1</sup> *Francia Teutonica* consisted, as indeed the name implies, of lands inhabited by Teutonic tribes as the Alamanni, who held the land on both banks of the Middle Rhine, especially, perhaps, the present Alsace, the Burgundians, the Franconians, the Saxons, and later the Visigoths in Aquitaine. All these became incorporated with the kingdom of the Franks, but it does not appear that any of their territory was confiscated. They came under the immediate authority of the king of the Franks; he, and none but he, was their sovereign ruler, and though the different tribes may have retained their own kings, these were simply *subreguli*.<sup>2</sup>

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1. It is impossible to determine the number of the Gallo-Roman population. It is certain that many of the Christians, especially in the North, the earlier seat of the Franks, and along the Rhine, may have perished in the wars, or may have left the country to avoid the persecution to which they were for a time subjected. Roth, *beneficialwesen*, s. 66.

2. Gregor. Tur. II, 30, gives the words of submission of the Alamanni, "*iam tui sumus*" and the term "*rex Francorum*" is used in the edicta having reference to the whole extent of the kingdom.

But notwithstanding this entire subjection under one king, which may be regarded as a compulsory union, the subject Gallo-Romans, as well as the several German tribes, were allowed to retain their own laws, by which they might each be judged.<sup>1</sup> Their laws, as their language, acquired and retained a provincial character. In the Ripurian law the district subject to that law is called Pagus Ripuarius, and in another place Provincia Ripuaria. The same occurs in the laws of the Alamanni, where

1. In these several codes of laws, we have such expressions used by the king of the Franks as "constituimus, jubemus, jussimus." This is specially in the *Leges Ripuariae*, but we also find in the *Leges Bajuvariorum*; *reges antecessores nostri consesserunt; judicaverunt antecessores nostri*, and in the same code, *hoc autem volumus inter Bajuvarios in perpetuum custodire*; and such expressions leave no doubt of the authority which the king exercised. It is evident that these laws were revised and re-issued with the full sanction and authority of the kings of France. It is difficult to determine the date of the original framing of any of these laws. The *Lex Salica* was very probably framed under Chilperic, the father of Clovis, but in the prologue of some editions it is expressly said that it was Clovis, qui legem Salicam statuit. But the conversion to Christianity led to other changes, to further revision or to additions. The additions are very evident in the laws of the Alamanni and the Bavarians, where they are prefixed to the original body of the laws, and in the codex of the Alamanni they are introduced in this form "*Incipit lex Alamannorum, quae temporibus Chlotarii regis una cum principibus suis, id sunt XXXIII episcopis, et XXXIV ducibus et, LXXII comitibus vel cetero populo constituta est.*" The preface to the Bavarian code tells us that the revision was begun under Theodoric rex Francorum, continued by Childebert, and completed by Chlothaire. The Salian and the Ripurian codes show the Christian influ-

the district is also called a *Provincia*, where the official, the *Dux*, administered justice with an ultimate appeal to the king, with whom the supreme adjudication rested. But while the Franks settled in the midst of a Gallo-Roman population, without despoiling them of their possessions, or to only a small extent, or without interfering in any degree with their privileges, still the Gallo-Romans did not hold the same position politically or socially with the Franks, for the *wehrgeld*—a compensation for

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ence in a revision rather than in an addition. By the time of Charlemagne, however, the two codes of the *Salii* and the *Ripuarii* seem alone to have remained in force, as we learn from Eginhard's *Life of Charlemagne*, ch. XXIX. "*Post susceptum imperiale nomen cum adverteret multa legibus populi sui deesse (nam Franci duas habent leges plurimuis in locis valde diversas). Cogitavit quae deerant addere et discrepantia unire; prava quoque ac perpera prolata corrigere.* It is probable that the corrections and the attempt at harmonising the two codes resulted in a recension which was virtually a new compilation, and which was henceforward known as the *Salic law*. And in a capitulare of the reign of Louis le Debonaire, 820, it is written "*Generalitur omnes admonemus ut capitula quae praeterito anno legi Salicae per omnium consensum addenda esse censuimus, iam non ulterius capitula, sed tantum Lex dicaantur immo pro lege teneantur,*" *Capitularia edit. Walter*. It would seem from this time the royal capitularies took the place of the *Salic law*. In civil matters, though the offence was against the Church or any officer of the Church, the accused was tried by the royal officer, but an offence directly against the Church was permitted to be tried, *Secundum legem Romanam, qua ecclesia vivit. Lex Ripua, tit. LVIII.* This must mean the law of the church of Rome. There is distinction frequently made in the capitularies between *leges ecclesiae* and *leges mundanae*.

murder or any injury—marked the social and political rank of the injured, and in the case of a Gallo-Roman it was half of what it was if a Frank had received the injury.<sup>1</sup> Though the Roman may then not have been despoiled of his land, his position was very much lowered. Many of the Romans, however, received offices in connection with the court, or in the provinces, and these at once took a position of dignity and importance, and the wehrgeld in such a case was much higher, apparently the same as that of a Frank. But though the laws of the Franks and the other

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1. Lex Salica, XLII. De Romanis vero vel letis et pueris haec lex ex medietate solvatur.

Lex Salica, tit. XIV. Si quis hominem ingenuum in superventum expoliaverit, et ei fuerit adprobatum hoc est 2500 dinarios, qui faciunt solidos 62½ culpabilis judicetur. Si vero Romanus Franco expoliaverit, causa superius comprehensa convenit observare. Si vero Francus Romano expoliaverit 1200 dinarios, qui faciunt 30 solidas, culpabilis judicetur. M. Glasson argues that the difference in the amount of the wehrgeld for an injury done to a Frank and to a Roman is no proof of inferiority of position. His argument is strangely weak. He refers to the fact that the Burgundians, the Visigoths, the Ripuarians and the Bavarians had each a different standard of wehrgeld. This is quite true and therefore the Salic law leaves it to these respective tribes to exact their own wehrgeld, and does not in their case mention any distinct wehrgeld. But the wehrgeld did not exist among the Romans, and therefore Mr. Glasson's argument has no bearing on the subject. The wehrgeld was essentially a German custom. It is not mentioned in the Theodosian code nor in the institutes of Justinian and therefore a decided wehrgeld had to be stated in the case of a Roman, and it is expressly mentioned that it was one half of that of a Salian Frank.

tribes settled in Gaul were essentially Teutonic in their character, the Germans do not appear to have had a regular constitution. Tacitus tells us that there were two great yearly assemblies of the tribe, one in March and the other in September, the one of the whole tribe, the other of the chief men.<sup>1</sup> There were also law courts in the several districts—Cantons or Hundreds—and the officers of these were chosen in the assembly of the Hundred.<sup>2</sup> The princeps so chosen by the Hundred became its president and the Assembly gave him counsel and authority—"concilium et auctoritas"—and it was he who administered justice as the representative of the king, from whom he derived his power. It is also very probable that the president of this Hundred court, the centenarius, led the men of the Hundred in war, just as the Alderman of the Hundred did in England. But these primitive courts were not adapted to the

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1. Tacitus *Germania* XI, De minoribus rebus principes consultant, de majoribus omnes.

2. Tac. *Ger.* XII, Eliguntur in eisdem conciliis principes qui jura per pagos vicosque reddant. Centeni singulis ex plebe comites, consilium simul et auctoritas, assunt. Sohm identifies the Pagus with the Vicus and regards the two expressions as simply a reiteration. Sohm, *Altdeutsche Gerichtsverfassung* s. 6, note. Bethmann-Holdweg über der Germanen vor der Wanderung s. 25, identifies the Pagus with the Gau. Waitz makes the Pagus a part of the gau. "Untertheilung der Gau für einen Bezirk kleinere als der Gau."

changed circumstances in which the Franks now were. The king had acquired increased power, and under his authority a new system was to develop itself.

## LECTURE X<sup>1</sup>.

### THE GRANTING OF LAND BY THE EARLIER KINGS OF FRANCE.

I have spoken of the arbitrary power which was exercised by the earlier Merovingian kings. In the state of confusion in which Gaul was, arising from the breaking up of the Western Empire, and the several Gothic invasions, as also from the disorganization which resulted among the Franks themselves in their wandering from their original seats, and from the undefined relations in which the Frankish tribes stood to one another, it would seem to have been absolutely necessary to concentrate all authority in the person of one firm and powerful ruler. We find therefore that all power, legislative, judicial, administrative and financial, as well as military, was in the hands of the king. But the king of the Franks could have had little or no experience in administrative or financial matters. The administration of the German tribes must have been of the simplest kind, for Tacitus speaks only of two yearly assemblies, and of the judicial courts of the Hundred. But the settle-

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1. Books consulted are the same as mentioned in the last lecture.

ment in Gaul and the authority of the king over a population, which was far from being homogeneous in its character, would necessitate a more extended and a more exact administration. The wants of royalty before the settlement in Gaul must have been few, and would be sufficiently met by the revenue derived from the fines levied in the courts, and the gifts which were frequently made, as also from the booty acquired in the campaigns, as well as from the sums received from fiscal lands. There were good reasons why the Franks should accept the revenue system of the Romans, for their wants were largely increased, and their revenue system was not sufficient. In the Salic law, the people are represented under three classes—the *Convivae Regis*, the *Possessores*, and the *Tributarii*. The first were evidently attendants or officials of the Royal court, while the legal position of the second and the third, both in name and in fact, was borrowed from the Roman constitution. The *Possessores* were the holders of landed property and paid the property tax. The *Tributarii* were the same as the Roman *Coloni*.<sup>1</sup>

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1. Savigny thinks that the *tributarii* were those who holding no landed property, paid a capitation tax. *Zeitschrift, für Geschichtlichen Rechtsverfassung*, b, VI, s. 369. But he seems to have failed to observe that in the *Carta Anno 749* the *tributarius* is called a *colonus*, and in the *capitulare* of 819 the *terra tributaria* is distinguished, from the *terra censualis*, which was evidently the same as *terra vectigalis*.

There is no doubt that the Franks also retained the custom duties, and the market as well as the road and bridge tolls, and these were collected by officers similar to the *Telonarii* of the Romans. The king also claimed the right of purveyance as had been the practice of the Emperors, and this included not only provision for man and horse but also relay of horses.<sup>1</sup> These exactions amounted to a large sum, but the later Merovingians granted a great many exemptions, and this diminished the revenue very much.

The Franks seem also to have retained the Roman municipal system. Tacitus<sup>2</sup> expressly tells us that the Germans had no towns, that they lived in isolated houses, and we may suppose that they would, therefore, know very lit-

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1. Gregory of Tours gives more than one instance of the exaction of purveyance, t. VI, 44-45. He also speaks of the gifts which were received on the marriage of the daughter of Chilperic, which in future came to be exacted. Glasson thinks that purveyance must have been a German custom, and was not borrowed from the Romans, because, he says, it was customary among the Anglo-Saxons. There is, however, no proof of the custom having existed in England before the Norman time. The *Feorm-Fultum* of the Anglo-Saxons differed from purveyance for it was a regular and fixed tax. It was apparently the exacting of purveyance as something possibly entirely new which led the people of Kent to resist Eustace of Boulogne in his attempt to exact purveyance. Entertainment, however, was required of the religious houses from early Anglo-Saxon times, and this is often stipulated in the charters.

2. Tac. *Germania* XVI.

tle about municipal government. There is every reason to believe that they accepted almost entirely the municipal government as it existed under the Romans. If we examine the formulae in the several collections, we find that the municipal court was the same as the old Roman curia, and the officers bore the same names, and discharged the same duties as under the Roman regime. Under the later Empire the prefect of the Curia was appointed by the Emperor, so the king of the Franks appointed the corresponding officer, generally the count or comes. The Curia had not only administrative but also judicial power. The church was generally well represented in the court, and in an Episcopal see the bishop always took a prominent place; sometimes he was even allowed to appoint the count or prefect, and on occasions took that office himself, as in the case of the Archbishop of Rheims. It was the Roman law which prevailed in the Curia, and the clause *secundum legem Romanam* is often met with in the capitularies. The municipal taxes still bore heavily on the citizens, and were sometimes farmed in the same way as under the Empire. In some of the Eastern towns and those along the Rhine, as at Cologne, Strasburg, Worms, and Treves on the Moselle, where the population was almost entirely Teutonic, municipal matters seem to have been conducted in a very

irregular way. There was no uniform system, and they apparently remained in this state till the time of Charlemagne. But the municipal government generally throughout the whole of France shared in the confusion and anarchy which marked the later Merovingian period. Their liberties were gradually encroached on, and very many were subsequently incorporated within the seigneuries, and became subject to seigneurial rule. At the time of the accession of the third or Capetian dynasty nearly all the towns had fallen under that rule, and the struggle to be released—the struggle of the communes for enfranchisement—is a very important page in the history of the twelfth and thirteenth centuries.

I have said that there is no proof that the Franks had taken possession of one-third of the property of the Gallo-Romans. The circumstances of the settlement of the Franks in Gaul differed in several respects from the settlement of the Ostrogoths or the Lombards, the Burgundians or the Visigoths. In Gaul, as in many other of the provinces, and even in the Roman Campagna, a large part of the land had been forsaken by the original proprietors, and was left uncultivated for reasons which we have already mentioned. Many Gallo-Roman proprietors had also perished in the long wars with the Huns, and with the Franks, and most of the

lands which they had held had not been occupied by other tenants. The lands also which had been held by the imperial government, the fiscal lands, were no doubt confiscated by the Franks. These several sources of supply would place in the hands of the king an ample store from which he might make large and frequent grants to whom he chose, and there does not appear to have been any restriction on these grants, or on the mode of their conveyance. In England from an early period the royal grants required the sanction of the Witenagemote, but there does not seem to have been a similar restriction on the action of the French king. Unfortunately, we have no copies of the earlier forms of conveyance, and we do not know exactly on what terms it was granted. In Kemble's or in Birch's collection of Anglo-Saxon charters, we have a large number of copies of the original charters of conveyance of land,<sup>1</sup> most of them, indeed, to religious houses, or to towns and burghs, and they one and all state very clearly the terms on which the grants were made, and the obligations which were connected with them. Thus the obligation of *Trinoda Necessitas* is expressly stipulated, or when an

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1. Birch, *Cantularium Saxonicum* I, No. 12, page 19, Anno 616. *Terra libera ab omnibus secularibus servitiis et fiscali tributo, exceptis istis tribus, expeditione, pontis arcisve constructione.*

immunity was ceded it is also stated. There is nothing similar in the French archives, and it is exceedingly difficult to arrive at any satisfactory knowledge of the form in which grants were made by the earlier Merovingian kings, and all we can gather are incidental notices, most of which are of later date. There is no doubt that the church was in possession of large estates, which had been held in the Gallo-Roman period, and which the several bishops and heads of religious houses were allowed to retain on taking an oath of fealty to the king, But it is difficult to determine not only the nature of the original grant, but of the subsequent confirmation by the French king. It is invariably called a benefice, and would, therefore, appear to have been a concession for only a limited period. The term benefice does not seem to have been limited to a grant of land, for an office is sometimes mentioned as a benefice, though such an office was also called *honor* as distinguished from a benefice. Very frequently, however, a benefice or grant of land was connected with an office, and we find the two combined, "*honor et beneficium*." But under any circumstances the holder of an honor or a benefice was obliged to swear fealty, to become the vassal of the lord from whom he received it or

whom he served.<sup>1</sup> The recipient of a benefice commended himself to the lord, who at the same time promised him protection and guardianship, or, to use the technical term, *munde burdium*.<sup>2</sup> But all free inhabitants of the land also took an oath of fidelity to the king, but whether this was the same as the oath of fealty taken by the holder of a benefice, it is impossible to determine. Waitz, Roth, as well as Eichhorn, think it was, but it seems very probable that the oath taken by common freemen was similar to the oath of allegiance which was required of every freeman under the Anglo-Saxon constitution, and differed from the fealty and homage which was required from the baron or the knight who held a benefice.

It was customary for the king of the Franks, after his succession, to pass through his kingdom in order to receive the fealty or allegiance from all his people without distinction or, when he was not able or not inclined to make a circuit of his kingdom, he sent his officers to receive the people's pledges as well as to grant immunities

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1. Capt. 779, ch. IX. Et qui hoc non fecerit beneficium et honorem perdat. Here the grant of land and the office were evidently held in connection, and were both alike forfeited. Capt. 817.

2. Roziere gives the pledge of fealty on the part of the vassal and the promise of protection on the part of the king. Roziere, I, pp. 3-15. Eichhorn, without sufficient proof, thinks that the oath of fealty was a mark of distinction between the Frank leud and the Roman.

which had already been enjoyed by the religious houses. We may not suppose that the grant of land and the associated pledge of fealty on the one part, or the protection promised on the other was copied either from the practice which Tacitus tells us was observed in the old German *comitatus*, when the chief gave a horse and armament to his comes, or on the other hand from the Roman custom of distributing lands among the disbanded legionaries in the provinces. The early Merovingian kings were sufficiently independent and powerful to follow their own course, and there are several features in the grants as well as in the oath and form of fealty which have given to the Frankish custom its distinctive character, and therefore it will perhaps be safer to attribute it to the force of circumstances which existed at the time of the Frankish settlement. There was, however, a sacredness in the form in which the vassal commended himself to his lord. He knelt at his feet, and placing his hands between his lord's hands did homage and swore fealty to him. This would almost seem to be a revival of the rite when the Etruscan to whom land was granted placed his hands in the hands of the priest *agrimensor*, and the grant was sealed by a religious service, a rite which, as I before pointed out, was followed by the earlier Romans, and revived under the later Empire.

There is no ground for an early distinction between an alod and a benefice, on which so many writers, as Mably, Guizot, Girard, Flach, and even Fustel de Coulange insist. Any separate distinction between them is due to circumstances which arose under the Carolingians. Roth maintains that the benefices given by the Merovingian kings were permanent and hereditary possessions, but there is no doubt that he is mistaken. I find from the *Carta Carolinorum* that the villa Exona was granted to the monastery of St. Dionysius by Clothaire II., and that the grant required to be renewed by Clovis II. But a more striking instance is that of the monastery of Corvey, which was granted by Clothaire and his queen, Baltachilda, and the grant was confirmed successively by Childeric, Theodoric, Clovis, Childebert, Dagobert, and finally by Pippin. The expressions used in the acts or charters of donation confirm this view.<sup>1</sup> I quite agree with Roth in thinking that the confiscation, or as he calls it, the secularization, of church property was not common under the

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1. The terms used in the *Acta Carolinorum* edit. Sickel, are as follows : *Quondam beneficiario jure habuerat, or beneficiario more, or beneficii titulo, or beneficii nomine,* and the regranting at a later period as a permanent possession was expressed as *in posterum observetur*, *in propriam reddit*, or *villam in perpetuum solemnī donatione confert*, or still more fully, *ut has res perpetuo possiderat, et cui voluerit hereditare relinquat*. Unfortunately nearly all the known charters are grants to churches.

Merovingian kings, but I cannot agree with him in supposing that there was a wholesale spoilation of church property made by Pippin.

The relation of vassalage was a mutual relation with reciprocal obligations. The vassal on his part did homage and promised fealty, while the lord gave assurance of protection. This protection, however, naturally implied the right of scrutiny and jurisdiction. This relation of vassalage existed as strongly in the case of clerics, bishops and abbots, as of laymen. The bishops and abbots did homage, and promised fealty, and claimed the right of protection, while the lord might equally insist on the due performance of obligations which were promised by the clerical vassal. The cleric, however, stood in a double relation, for not merely did he stand in relation of vassalage to the king, but also at the same time in relation to the church, a relation in which the lay lord or king had no right to interfere. The king or lord had no control over matters of faith, or doctrine, or church discipline. Sometimes it was very difficult to draw an exact line of separation between the two spheres of jurisdiction. It is true that the councils of the church sought to define the church's jurisdiction, but the councils of the church were composed only of clerics, who were naturally inclined to put forth extreme claims, which they were not able to justi-

fy, and which the king might not be disposed to acknowledge. The later Merovingians were weak, lacking in ability, in vigour, and too often in morality, and the kingdom fell into anarchy and confusion. Under these circumstances it can easily be understod that the bishops and abbots might refuse to acknowledge any right which the king might claim to inquire into their affairs, or exercise any jurisdiction over them, and these faineant kings were not able to maintain their rights. When the kingdom passed into the firmer hands of the Carolingians, these appear to have insisted on the observance of any obligation which the oath of fealty implied, or of any rights which the duty of protection gave them. The claims made by the early Carolingians the vassals, and especially the clerical vassals, resisted, and the result was that many of the estates were confiscated. Roth mentions sundry striking instances of such confiscations made by Charles Martel. Charles, however, was only Major Domus, and any general confiscation would have been a virtual usurpation of power; his life too was so occupied with the contest with the Saracens and others that his attention was rather diverted to foreign affairs, and he does not seem to have troubled himself about the independent action of the vassals.

## LECTURE XI.

### THE GOVERNMENT UNDER THE CAROLINGIANS.

There is no doubt that the transference of the crown from Chilperic, the last of the Merovingian kings, to Pippin, brought about an important change in the form of vassalage. I pointed out in my last lecture that the Merovingian kings had not maintained their rights, and that the result was anarchy and confusion. The vassals, both clerical and lay, had shown an independence which was not compatible with their oath of fealty, or the obligations which were due to the king for that protection and patronage which he promised to afford them. And now Pippin confiscated a large number of the benefices which were held by the recalcitrant vassals, and redistributed them. The form of the new grants differed in important respects

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Books consulted: besides those mentioned, in the last lectures, add Eginhards *Vita Caroli*, and his *Annales*, Abel U. Simpson, *Jahrbucher der Frankischen Reichs unter Karl dem Grossen*. Simpson *Jahrbucher der Fr. Reichs unter Ludwig dem Fromme*. Siokel, *Acta Karolinorum*, Loebell, *Gregor. von Tours und seine Zeit*. Assai sur l'Origine de la Noblesse en France par P. Guilhaumez.

from the old, for while a number were granted as benefices, many were granted as permanent and hereditary possessions. It was apparently at this time that distinct names were used in reference to these grants, and those that were permanent and hereditary were henceforward known as alods or alleux, while those that were granted for a limited period retained the old name of benefices. It is still impossible to determine what obligations were attached to these grants. Neither in the *Acta Carolinorum*, nor in the *Capitularies*, nor in the *Formulae* can I find any direct stipulation of military service. There can be no doubt that it was required, for there are frequent summonses to the army with the threat of punishment if the services required were not rendered.<sup>1</sup> But it is questionable whether it was not exacted rather by the arbitrariness of the king than according to any stipulation in the grant. In Pippin's Campaigns in Italy, and in the wars of Charlemagne, not only in Italy but against the Saxons, the Bavarians or the Saracens as well as in Aquitaine, large armies were necessary, and from incidental notices in the capitularies it would seem that all freemen without distinction

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1. *Cap Saxonum*, 797, *Et de exercitu nullus super bannum domini regis remanere praesumat*, *Cap. Baiorum* 803 *Qui jussionem regiam in hostem bannitus irrumperit*. *Cap. 802*, *Ut omnes parati sint, quando jussio nostra vel annunciatio venerit*.

were obliged to enroll themselves under the counts or dukes of the several districts. Yet it is doubtful if any regular system of military service was established till the later years of Charlemagne.

The larger or allodial proprietors soon began to show the same grasping spirit as we have seen in the Roman patricians and capitalists, and by fair means or foul they sought to possess themselves of the lands of the smaller proprietors, the beneficiaries. The later kings of the Carolingian dynasty, like the later Merovingians, were unable to maintain their authority, and restrain the aggressive spirit of the greater *seigneurs*, to use a term which now became common. The smaller proprietors had, therefore, to adopt means to protect themselves as far as possible, and a practice which had been observed by the church from the earlier centuries was now very generally adopted. You will remember that in the oppression which the decurions suffered under the later Empire, many had relinquished the proprietorship of their land to the church, and had received it back in usufruct, or as it was very generally called, in patronage. This practice seems to have been continued during the Merovingian period, and now under the Carolingian it was very generally followed. The right of proprietorship passed in these instances by an act of commendation,

to use the technical expression,<sup>1</sup> over to the church. Through this practice the church became possessed of very large estates over the whole of France. But the practice ceased to be confined to the church; the king himself often received back smaller allodial possessions and regranted them as benefices. The holder of these came under his protection or *mundeburdium*, and were no longer independent proprietors. The larger allodial proprietors also found it to their advantage to adopt the practice, and very greatly extended their possessions by this less costly and simpler process. In each case the man who wished to place himself under the protection of another, whether the church, the king, or a greater allodial proprietor, came with a branch or a clod of earth from his land, and placing his hands between his lord's hands commended himself to his safe keeping, did homage and swore fealty. Commendation to the king presented peculiar advantages. The natural dignity of the crown, the pomp of the court, its fetes and festivities, would always prove a strong attraction. But the royal court was still the highest court in the land, the ultimate court of appeal, and in case of an accusation the Antrusion of the king naturally appealed to the royal court, so that the protected was judged by

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1. *Se Commendare.*

the protector. We can imagine what an advantage in that early state of society the royal vassal would enjoy, whether as plaintiff or defendant, and we need not therefore wonder that many should have commended themselves to the king. But many of the leuds of the king received offices at court, became members of the royal household or were appointed to various commissions as judges in the provinces. They came to form a distinct class and to assume a higher rank of nobility; they were seigneurs *in capite*. It may not be out of place to remark that under both the Merovingian and Carolingian kings many of these royal leuds, whether as original proprietors or as now holding benefices through commendation, were of Gallo-Roman origin; in fact, many of these occupied high offices both in church and state. And we can see how this might well be. As a rule, they were better educated, they were more familiar with the practices and customs of Roman law, and had more experience with the affairs of government, whether municipal or imperial. This would give them an advantage of which they would readily avail themselves, and we are not astonished at the number of Roman names that appear among the officers of the court or the dignitaries of the church. Indeed, a large proportion of the bishops and abbots for many generations were of Gallo-Roman origin.

But while the crown held out great advantages, which induced many to seek its protection and commend themselves to it, scarcely less were the advantages which the church presented. The Franks now converted to Christianity, or the Gallo-Romans in their zealous devotion, were alike easily influenced by the fears or the seductions of the church. As the Franks in their former life had made great sacrifices to their gods, so to their descendants it might be a comparatively small matter to relinquish their property through commendation, or by bequest at death, or on retiring to some monastery, in return for its blessing to donate to it their worldly goods. But not less powerful were the inducements which might influence a Gallo-Roman. The form of the donation and of the commendation has been preserved. "For the salvation of my soul, the remission of my sins, and in order to amass treasure in Heaven, I give or I bequeath, etc." And with the act of commendation, there was the oath of fealty. In these several ways the estates of the church became so vast that even Chilperic II. complained: "Our treasury is become poor, our riches have been transferred to the churches, the bishops alone reign, the glory of the throne has disappeared and the bishops are invested with it."

Now the tenure of land underwent a very important change from the causes which we

have just mentioned,—through usurpation, through bequests or donations, principally to the church, and through commendation. The result of these changes was on the one hand to reduce the number of the alleux or large and permanent possessions, and on the other hand to increase the number of the benefices. The smaller allodial properties had changed their character. The holders of these properties had been obliged or induced to relinquish to another their permanent rights, and to subject themselves,—to become the men, the leuds, or the vassals, for all these terms are used,—of a larger proprietor. Some of the alleux were so increased in size and in the number of their vassals as to become dangerous to the royal power. They proved hostile to the public interests, and the Burgundian kings, as well as the kings of the Visigoths, prohibited commendation, and much the same course was followed in England, where subinfeudation was virtually prohibited by William I., the prohibition being renewed by the statute “*Quia emptores.*” The French kings were at first rather favourable to the change, as they themselves derived a temporary advantage from it, and apparently did not see the result which was only too certain to follow. It will be easily understood that in the weakness of the central power the other powers in the state should assume increased authority. The great

allodial proprietors now held estates so extensive that they vied with the throne in dignity and importance. By the middle of the ninth century, France was cut up into fifty-five great lordships, whether duchies or counties or viscounties, virtually small sovereignties governed by their own laws, having their own courts, and administering their own affairs. The natural result was the dismemberment of the Kingdom. Unwilling apparently to believe that the system of division of property into alleux and benefices, and the subsequent change brought about by usurpation and commendation, could account for the dissolution of the central power, and the growth of independent great feudalities, many writers have sought for other causes. Thus M. Augustin Thierry, one of the ablest and most judicious of French historians, thinks that the dismemberment of the kingdom at this time was due to the conflict of races. I quite agree with him when he attributes the separation of the several kingdoms from France by the treaty of Verdun, and of other divisions shortly after, to the diversity of races, but I cannot agree with him when he attributes to the same cause the subsequent division of France into separate counties and duchies or seigneuries, with independent authority. He refers to the counties of Brittany and of Aquitaine and the duchy of Normandy, in illus-

tration of his views, and this with some show of plausibility. But these were isolated instances. Brittany had always maintained a degree of independence, and neither Brittany nor Normandy nor indeed Aquitaine had been affected to any extent by the principle of usurpation or commendation. I think that M. Thierry is equally mistaken when he regards the change from the second to the third dynasty, from the Carolingian to the Capetian, as due to the same cause, the determination of the Gallo-Roman population to get rid of a race of Frank or Teutonic kings,<sup>1</sup> and to elevate to the throne one of the indigenous race. The question naturally suggests itself: Was Hugh Capet of Gallo-Roman descent? This is extremely doubtful, and under any circumstances it is certain that he drew his support principally from those that were undoubtedly of foreign origin.

This system of allodial property and benefices, out of which the later feudal system grew, is not peculiar to France. In fact it seems to be natural to certain conditions of society. All we can say is that it developed fuller results in France than it did anywhere else, but

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1. Aug. Thierry, *lettres sur l'histoire de France*, XII. Il s'agissait de raciner du Royaume de la France la posterité des rois Franks . . . ils le (Hugh Capet) designaient comme candidat a la race indigene.

in a less degree it existed in Italy, in Spain, in Germany, and in England; indeed, it is to be found existing in the ancient world, as among the Egyptians. It is a natural consequence of the same conditions everywhere; it is the result of the weakness of the state, for where the state is not sufficiently powerful to afford security to life and property, the weak must place themselves under the protection of the strong. We see it under the later Empire, which could not protect its subjects, but rather was itself the most violent oppressor, and at the time of which we are now more especially speaking, under the later Carolingians, we see the same state of things. But we have here a virtual dissolution of the bonds which hold society together. The weak man who relinquished his property and his freedom into the hands of another ceased to belong to the state. He belonged to the baron or seigneur to whom the stress of circumstances had compelled him to submit himself. He became the client of a patron, and was only responsible to the patron. There are several terms which are used to express this relationship both among the Latins and the Germans. In the Frankish formulae the man who became the subordinate of the other was his *leud* or his man. This cliental was a refuge open to all classes of men, the ecclesiastic as well as the layman, the labourer as well as the warrior, and

sometimes the same man might be at once the client of a more powerful, and the patron of one still more feeble. There are formulae appertaining to all the different ranks, and it may be well to give you one of the formulae which expresses very well the relation of the party, though it be a very subordinate relation: "As it is notorious that I have not the wherewithal to nourish myself or to clothe myself, (*minime habeo unde me pascere vel vestire debeam*), I address myself to your charity, and of my own free will (*ut mihi decrevit voluntas*) I am decided to place myself under your mundeburd (*in vestrum mundeburdium*), and to commend myself to you in order that you may aid me with nourishment and clothing, while I will serve you, and will merit your gifts; so long as I live I will owe you service and obedience, while still, however, retaining my rank as a freeman. But it will not be possible for me to withdraw myself from your authority. I will be held to be always under your protection and under your power." This formula expresses very clearly the relation in which these men were henceforward to stand to one another. It was formed of their own free will, and apparently after due consideration, and the motives are clearly expressed. Not in every instance were the wants or the motives the same. Society has very varied demands, but in the ma-

jority of cases it was security of person and property which was needed. You will see that the patron was under an obligation to defend on every occasion, and against every danger, the man who had commended himself to him. He owed him the protection of his arms if he were attacked, that of his word if he were accused in a civil process. There are instances where the client or leud was summoned before a court during his lord's absence, and judgment had to be suspended till the lord's return. If the lord was in this way obliged to protect his man against any accusation, he was also obliged, if the latter were injured, to seek redress. But if the man were killed, his lord received the wehrgeld. Gregory of Tours mentions a case where a man under the patronage of Queen Brunhild was murdered. It was the queen who claimed vengeance, and received the wehrgeld. Another instance is mentioned where a bishop had commended himself to Queen Immichilda. Being called one day to justice, the queen was obliged to defend him. You will see that patronage, such as I have presented it, was a contract. It seems to have ceased when by any means the contract was broken; it is doubtful if it passed from father to son without a renewal of the obligation. I have pointed out to you that the benefices were at first granted for a limited or definite period, but there was a grow-

ing tendency for the benefices to become hereditary, like the allodial lands. A holder of land, though only a mere tenant, naturally acquires an increasing interest in the land which he occupies. He cultivates and improves it and becomes attached to it. He forms friendships with his neighbors, and very often matrimonial alliances, and he becomes unwilling to break all his associations, or to forfeit all the labour of his industry, and to remove to any other part of the country, or on his death to leave his family without any interest in the land which he and they have cultivated, and which was the home of his family's childhood. The general tendency of these benefices was, therefore, to become hereditary, and as the change did not really affect the relations to the lord, so the lord might not unwillingly see the growing permanency of his *fideles*, and their growing attachment to the land. From this time the term benefice seems to have dropped out of the documents of the period, and the term fief was henceforward almost invariably used, as well as the term fideles.

The permanency of occupation very naturally gave greater force to the incidents of Feudalism, and these may be said to have confirmed the permanency. These incidents were quite separate from the obligation of fealty and of military service. They were such as, first, Re-

lief, or what may be called the fine of inheritance, and which the heir had to pay his lord on his accession to the estate; second, the fine of Alienation, or the amount which the vassal had to pay his lord to be allowed to dispose of his property; third, Escheat or the restoration of the fief to the lord when the vassal died without heirs, or had forfeited his rights through the perpetration of some crime; fourth, Aids or Auxilia, such as purveyance, and contributing funds on a special occasion, as on the marriage of a lord's sister, or of his heirs, or when a son received his knighthood; fifth, Wardship, by virtue of which the lord had the wardship of his tenant during minority, the care of his person and the profits of the estate; sixth, Marriage, when the lord claimed the privilege of choosing a husband for his female ward while she was under age, and whom she could not reject without a heavy forfeiture. Later this was in many instances extended to a male ward. These incidents became universal, and were exacted till a comparatively late period. They grew out of that arbitrary power which the feudal lords exercised, and perhaps more than anything else they may serve to illustrate how arbitrary that power really was. Any knowledge we possess of the manner in which these incidents were exacted is gathered from the Coutumes, or legal codes of the several counties of France, or

from the Polyptyques of various monasteries. Many of these exactions, and especially the right of banalité,<sup>1</sup> existed in our own country, in the Province of Quebec, under the French regime, till the abrogation of the Feudal system in 1854, and in the case of religious houses may be said still to exist, as by the Treaty of Session these were secured in the privileges which they had previously enjoyed.

After the Norman conquest, the incidents of Feudalism were introduced into England, and this has led many writers to suppose that Feudalism had only then its origin in England. The essential elements of Feudalism had existed there long before, in the form of manorial courts with administration of justice, and of military service, which, in spite of Mr. Freeman's views to the contrary, are mentioned in the very earliest Anglo-Saxon charters.<sup>2</sup> It is possible that wardship existed in England before the Norman conquest, and certainly the Anglo-Saxon heriot preceded the introduction of the French relief. We have represented relief as the fine of inheritance, which the heir paid to his seigneur, but in

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1. The right of erecting a common mill or oven, where the tenants (censitaires) were obliged to get their grain ground or their bread baked. See *Essay on Feudalism in Canada* by Dr. Bennett Munro.

2 Perhaps the earliest mention of military service in England is in a charter of 616, vid, Birch's *Cartularium Saxonicum*, Vol. I., sub. anno.

heriot the payment was retrospective; it grew out of the practice that when a Comes, who attached himself to a prince or a chief, died or left his service, the horse and the arms which he had received were returned, a practice which continued long after the Comes had become an English Thegn. In the Customs of Berkshire, in Domesday Book, there is mention of this custom, and it is expressly stated that on the death of a Thegn or Miles Regis there was returned to the king all his armour, with one saddled horse, and one without the saddle.<sup>1</sup> This is an example of the Anglo-Saxon heriot, though in the text it is stated to be *pro relevamento*. The heriot was evidently passing over to the French relief, though the idea which lay under each was essentially different.

You will have seen that there was a constant tendency for the greater allodial proprietors to extend their power and to exercise a widening influence, and that the weakness of the later Carolingians afforded opportunity for this. They not only increased their estates through the absorption of the neighboring alleux in the different forms I have mentioned, but they also assumed greater authority, especially in the important direction of the adminis-

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1. *Tainus vel miles regis dominicus moriens pro relevamento dimittebat regi omnia arma, et equum unum cum sella, alium sine sella,* Domesday Book, Bk. I, 56.

tration of justice. Indeed, this is perhaps the most important feature in the growth of feudalism, and demands especial attention. Gibbon makes the very suggestive remark that the laws of a nation form the most important and instructive portion of its history. He saw clearly how the development of Roman law was so bound up with the growth of the Roman people, that their legal development could not be separated from the development of their national and social life. Arnold, the German legist, in his *Cultur und Rechtsleben* expresses this in another way when he says: "It is perfectly evident that the state of the laws, in its dependence on the other elements of life, must be simply the contemporary culture of the people, and it is quite true that each stage, not merely in the world's history, but in the history of each nation, has been marked by the existence of characteristic laws and their embodiment in corresponding institutions, and therefore that a study of these laws must reveal a picture of the time at which they were enforced." In proportion as man emerges out of a state of savagery, and progresses towards civilization, so his relations become more complex, and the social organization needs to be regulated by laws adapted to his improved social development. If we examine the statute book of any of the civilized nations of the present day, we shall find that in

the earlier period the greater majority of the laws are regarding matters which affect the relations of individuals to one another, while those which concern the duties and rights of society come later, and still later those which relate to the holding of property. Sir James Stephens remarks, regarding the legal measures of an early stage of society: "It has often seemed to me singular that in proportion as we go back in legal history, the law becomes more and more technical, intricate, and minute in its details, more and more vague in its general principles." However singular this may appear, it is not difficult of explanation. The rules of life were at an earlier period not recognized as general principles, leaving room for freedom of judgment in detail. There was evidently no idea of systematizing, and each injury inflicted, each crime committed, stood as an isolated fact, and had its own penalty. The force of Sir James Stephens' remarks is very well illustrated by the Salian and Ripuarian or other Gothic laws. But with the improvement of social and political life, we notice a gradual improvement in the character not only of the laws but of the judicial administration. The language of Rome came into very general use, gradually displacing the Gothic, while Roman culture, and Roman customs, as well as Roman law acquired greater influence. Not that either the code of

Justinian or that of Theodosius was adopted, but that the Edicta or Decreta of the later Merovingian kings show undoubted traces of the study of Roman law, while judicial administration had also undergone a change. Under Pippin and Charlemagne, there was a partial return to the Salic law, as well as a revival of the popular assemblies. Pippin restored the assembly of March, or rather he substituted for it one in May, which was a great military assembly. Charlemagne went further and called two meetings in the year, conforming to the March and September meetings of the old German practice mentioned by Tacitus, and to one or other of these legal matters were occasionally referred. But this effort of Charlemagne was of short duration; some of the most important changes in the development of the laws of the Franks took place during his reign, and he summoned assemblies where he pleased and as necessity required. In the earlier years of his reign, the most frequent place of meeting was at Worms, but after the palace there was burnt the assemblies were held at various places, though perhaps Aix-la-Chapelle enjoyed the preference. After Louis le Debonnaire they rarely if ever met. Charlemagne's influence is perhaps most plainly manifested in his legislation and judicial administration, which we shall consider in our next lecture.

## LECTURE XII.<sup>1</sup>

### THE DEVELOPMENT OF THE JUDICIAL SYSTEM. THE ACCESSION OF THE CAPETIANS. THE ESTABLISH- MENT OF FEUDALISM.

In any consideration of the legal development of the Frankish constitution, we cannot but be impressed with the very great importance of the royal power. Even with Clovis the king became the source of all law, and the controlling spirit of the whole judicial administration. The principle of popular government, which had prevailed among the German tribes, had ceased. Tacitus tells us that the laws of the Germans had been issued with the full concur-

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1. Books consulted : *Capitularia Regum Francorum*, edit. Stephanus Baluzius. *Corpus Juris Germanici Antiqui*, edit. Ferd. Walter. *Deutsche Rechtsgeschichte* von Ferd. Walter. *Deutsche Staats und Rechtsgeschichte* von Karl Fred Eichhorn. *Die Fränkische Reichs und Gerichtsverfassung* von Rudolph Sohm. *Deutsche Rechts Geschichte* von Geo. Waitz. *Die Deutsche Rechts Geschichte* von H. Brunner. *Receuil des Formules Usitées dans l'Empire de Franc*, par Eugene de Roziere. *Essai sur l'Histoire du droit Français au Moyen age*, par Ch. Girard. *Histoire des Institutions Politiques et Administratives de la France* par Paul Viollet. *Histoire du droit et des Institutions de la France* par E. Glasson. *Jahrbücher des Frankischen Reichs unter Karl dem Grossen*, von Sigurd Abel und Bernhard Simson. *Acta Regum et Imperatorum Karolinorum digesta et enarrata*, von Th.

rence of the people, and the Hundred court, in which these laws were administered, was a popular assembly of the free men of the Hundred. But very soon after the settlement in Gaul, the sole arbitrary power of the Frankish king almost entirely set aside any manifestation of the popular will. There were Ecclesiastical Synods held, in which the king and the nobles sat with the bishops and abbots, and where matters not merely of spiritual but also of general interest to the kingdom were determined, but in no case do we find any mention of the people being present, or of any popular representation.<sup>1</sup> Any legal enactment emanated from the throne, while the king himself was above all law. Under the Merovingian kings, the inferior officers of the lower courts were elected by the people, but the higher officers were appointed by the king, and there was always an appeal from the

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Sickel. *Jahrbücher des Frankischen Reichs unter Ludvig den Frommen*, von Bernhard Simson. *Histoire des Français* par J. C. L. Simond de Sismondi. *Storia d'Italia del Medio evo* di Carlo Troya. *Les Coutumes de Beauvaisis* de Philippe de Beaumanoir, edit. A. M. Salmon. *Polyp-tyque* del Abbé Irminon par B. Guérard. *Deutsche Geschichte unter den Karolingern* von Engelbert Mühlbacher. *Assises du Royaume de Jerusalem*, edit. Victor Fouchsr. *The Constitutional History of England* by William Stubbs. *Cartularium Saxonicum* by DeGrey Birch, vol. I.

1. The peace between Gunthrum and Childebert was *Episcoporum procerumque concilio*, and there is no mention of the people, or of any public assembly, and in the *Edicta* of Clothaire at the Synod of Paris in 615, he calls himself *rex super omnem plebem*.

lower courts to the royal court, where the king was supreme. We are naturally led to contrast this condition of affairs in France with what we know of the constitution of the Anglo-Saxons or of the Lombards. We find under the Lombard kings frequent mention of the common action of the people.<sup>1</sup> In the laws of Rothar and of Grimoald, it is expressly stated that they were issued with the common consent of all, and this is still more strongly said in the laws of Luitprand.<sup>2</sup> Even after the Lombards fell under the power of the Carolingian kings, these respected the already existing constitution, and issued separate edicta for regulating the relations of the Lombards, in which the popular element was more fully respected than it was in that part of the Empire which was north of the Alps. In England even from the earliest Anglo-Saxon times the monarchy has been limited. The Witenagemote was the supreme source of all legislation and even of ju-

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1. Cum omnibus iudicibus et reliquis fidelibus meis Longabardis et cuncto populo assistente, Troya gives to these words a very wide signification: *Storia d'Italia* vol. IV, pt. III, p. 149. Cuncto populo assistente. Cio è tanto più vero, quanto più largo e generale suona il dire, che assistè alla promulgazione delle Leggi l'intera Nazione Longobarda. nella quale si comprendevano i Longobardizzati di tutte le razze.

2. Vid. *Leges Luitprandi* I. I, Prologus. Capitula addita ad leges Longobardorum sub anno 801. In the *Leges Lotharii* I, tit. 48, it is laid down that the Scabini were to be chosen "cum totius populi consensu."

dicial action, and was regarded as expressing the voice of the people. All land was folk land, the land of the people, till it became bocland, chartered or patented land, and was granted by the king only with the consent of the Witenagemote. The several courts of the Township, the Hundred, and the County were essentially popular courts, in which the people had a full representation together with the two other estates of the clergy and the nobles, and it was this popular representation of the three estates which gave to the English constitution its healthy and vigorous character, as it was the want of it which entailed on the constitution of the Franks its weakness, its many burdens, and its frequent evils. There is no doubt that the Franks brought with them in their settlement in Gaul very much the same constitutional forms as the Anglo-Saxons had carried to Britain. Yet, as Voltaire remarks, it is a striking fact that, starting from the same point, they reached results so very different.

It is difficult to determine the several judicial districts of the Frankish kingdom, not only because we have no accurate information on the subject, but because they apparently underwent from time to time very great changes. The duchies of the Merovingian period seem to have conformed to the old Roman *Provinciae* or *Civitates*. If we may

accept as correct the information given us by the geographer Ptolemy, it would seem that the three large provinces of Aquitaine or the Romana Provincia, of Celtic Gaul, and of Belgic Gaul were divided into smaller divisions, which were also called Provinces. Thus Aquitaine had seventeen of these smaller provinces; Celtic Gaul had twenty-eight, and Belgic Gaul, twenty-three. Ptolemy believes that these smaller divisions were determined by the presence of different peoples or possibly clans. The *Notitia Provinciarum et Civitatum Galliae*, which belongs to a later period than Ptolemy's Geography, divides Gaul into seventeen Provinces, and a hundred and forty-one Civitates. Now there is every reason to believe that these Provinces, perhaps rather those of the *Notitia* than of Ptolemy, formed the future duchies of France. Subsequently these duchies were transformed into counties, and on the accession of the Capets there remained only four or five duchies. But a term of more frequent occurrence is Pagus, evidently identified with the County, and also with the German Gau. The Pagus of Gregory of Tours is the gau of the Salic law, as the Comes of Gregory is the Graf of the Salic law. A subdivision of the Pagus was the Hundred with its presiding officer, the centenarius or tunginus. The Pagus, as well as the Centina or Hundred, were divisions for the purpose of judicial admin-

istration.<sup>1</sup> They conformed in some measure to the county or shire and the Hundred of the Anglo-Saxon administration. The Comes or Graf presided in the County Court as the Centinarius in the Hundred. The duke does not seem to have had judicial power, and his position was most probably limited to his connection with the army.<sup>2</sup> He was responsible for the contingent to the army, afforded by his district, which was larger than the district of the Count, and he might have several counts under him. He had his fisc, and the right of granting fiefs. In the distribution of estates under Pippin and Charlemagne, the ducal estates are not mentioned, and in Charlemagne's directions to the missi, while the duties of the counts, and the centinarii are particularly enjoined, there is no allusion to the dukes. The duties of the Count or Graf<sup>3</sup> were essentially of a judicial character, though he

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1. Brunner doubts whether the court of the Centina exercised judicial power before the period of the later Merovingians. *Rechtsgeschichte* B. II, p. 143, note. The terms of the Salic law, tit. 59-60, however, can leave no doubt in this respect.

2 The Dukes are frequently mentioned by Gregory of Tours and always in relation to the army. In the formula (Roziere VII) *Carta de Ducatu*, occurs the expression, *Tibi ad agendum regendumque commissimus*. The date of this carta is uncertain, but it appears to belong to the Merovingian period, and would seem to imply that the duties of the Duke were not restricted merely to his military command.

3. In the Ripuarian laws a distinction is made between the Comes and the Graf, *Lex. Rip.* t. 88.

generally held a military command under the Duke, at least during the Merovingian period. He was nominated by the king, and his duty was in general terms to maintain the peace of his County or Pagus. With him were associated for judicial purposes a number of Sacabarones. At first these may have been elected by the ingenui or freemen of the county, but they were very early appointed by the king, and he generally chose them from the attendants of his court, even though his nominees may not have attained their freedom, but were *pueri regis*.<sup>1</sup> Three Sacabarones only sat with the count in the court of the Pagus. It is impossible to determine whether they had any other duties than as assessors.

Below the Pagus or Gau or County with its court was the Hundred, or as it was called in some documents of the period, the Vicaria.<sup>2</sup>

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1. Lex Salica, T. 57, Siquis Sagibaronem, qui puer regis fuerat, occiderit XII denariis culpabilis dicetur. Siquis sagibaronem qui ingenius est occiderit, XXIV den. culpabilis dicetur.

2. In the Polyptyque of Irminon, we find frequent mention of the Vicaria as apparently the same as the Hundred, yet in other places a distinction is made between them. In the formulae a distinction between them is evident, as in the Preceptum Negotionibus, tit. III, ch. 3. Sohm draws a rather nice distinction between the two terms. He thinks Centena refers to the more local division Orts-sprengel-land-schaftliche Bezirk and vicaria to the official character, the Amts-hundertschaft. Die Frankische Reichsverfassung, s. 202. Waitz identifies them in every respect B. III, s. 393.

This division of the Hundred had no doubt originally reference to the quota which it furnished to the army. As I have already said, the presiding officer was the *tunginus* or *centinarius*.<sup>1</sup> With him sat seven *Rachimburgi*. The *Centenarius* and *Rachimburgi* would seem to have been originally elected by the people,<sup>2</sup> but Charlemagne appointed the *centenarius*, and substituted for the *Rachimburgi* an equal number of *Scabini*.<sup>3</sup> The *Rachimburgi* were apparently nominated for the term of each court, but the *Scabini* were permanent officials, and as such were henceforth appointed by the king.<sup>4</sup> This change was most important, taken in connection with the fact that the general assembly of the people had ceased to be summoned. It was the

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1. Grimm identifies the *Tunginus* with the Anglo-Saxon *Tungerefa*.

2. Even in the capitulum of 809, t. 22, it is written "Ut Judices, Vicédomini Præpositi, Avocati, Centenarii, Scabini, cum comite et populo, eligantur."

3. In the capitulum Lothairii, tit. III, we read *Exceptis septem Scabinis*, though twelve *Scabini* are also mentioned.

Among the Lombards, the election of the *Scabini* remained with the people much longer than it did in France. In the laws of Lothaire, we read that improper *scabini* were to be dismissed by the *missi*, and a new choice to be made in their place, with the consent of the people: "*ut missi nostri ubicunque malos scabinos invenient, ejicient, et cum totius populi consensu in eorum loco eligant*." Charlemagne had apparently commissioned his *missi* both in France and in Italy to appoint *scabini* "*ut missi nostri scabinos per singula loca eligant*" Cap. 803.

4. Sohm, *Altdeutsche Reichs und Gerichtsverfassung*.

removal of the last remnant of the popular element from the local courts, and destroyed a very important bond which had connected the people with the administration of justice and with the crown. In England the several local courts preserved through popular representation the independent administration of justice, and connected the interests of the people with the royal interests, and this connection was still further strengthened by the creation of the curia regis, and the appointment of the justices in eyre. The Norman kings soon came to understand that the strength of the crown lay in the support of the people, and William Rufus had no other means of putting down the rebellion of his Norman barons than by the aid which he received from his free Anglo-Saxon subjects. But the French kings never seem to have realized the importance of this relation. They never, through the long centuries of their history, learnt that the interests of a king and his subjects are the same, and that the strength of the throne rests on their support, on their sympathy and confidence. Charlemagne, notwithstanding his clear judgment and his undoubted administrative ability, yet, however unwittingly, paved the way for the rapid advance of feudalism, even in its sternest form, by removing the last vestige of the popular element from the local courts, and substituting the Scabini, nomina-

ted by himself and holding their office for life, for the Rachimburgi elected by the people and acting only for a limited period. So long as Charlemagne lived, he sought to maintain the strict administration of justice and appointed commissioners or missi, to whom in their several circuits he gave a very wide commission of inspection, not only as to the mode in which justice was administered, but in all matters both lay and ecclesiastical.<sup>1</sup>

How long this strict supervision of judicial, official and ecclesiastical administration was maintained by his successors it is difficult to determine. The principal fact to be borne in mind is that the Graf and the Centenarius, as well as the inferior officers of the respective districts, were appointed by the king. He was the great source of justice, and these officers were his delegates, and their authority therefore was a delegated authority. We have already had occasion to notice how dignities and offices have a strong tendency to become hereditary. In this way the office of Count, which had at an earlier period depended on the royal will, became hereditary, and what had been a delegated authority became a usurped right, while the Count exercised justice within his county no longer as

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1. The directions given to the missi are fully detailed in the capitulare III, 803.

a royal officer, but as a seigneur, administering independent justice.

In England the sheriffs, during the confusion and anarchy of Stephen's reign, put forth the claim to hold their offices by hereditary right, and made very great exactions in their respective counties. But the popular voice soon made itself heard, and Henry II was obliged to order an inquest of sheriffs. The result was a very general removal of the sheriffs from office, as well as a great lessening of the sheriff's power. The rating of the counties was taken out of their hands, and placed under the itinerant justices, on a report of the Jury of Presentment. The towns also were allowed to farm their own taxes by the statute of Firma Burgi. There was no possibility of similar occurrences in France, for the popular voice was silenced for centuries by the arbitrary action of the king, and afterwards by the still more arbitrary rule of the several seigneurs.

The weakness of later Carolingian kings, and the confusion which marked their reigns, afforded the opportunity for the usurpation by the counts, so that by the close of the Carolingian period, the independent administration of seigneurial justice was fully established, and a great step was taken in the development of the feudal system. Indeed the two main features of feudalism are this independent administra-

tion of seigneurial justice, and the right of exacting military service. The one was almost a necessary concomitant of the other. The duty of enforcing judicial regulations, and also the continued contests which arose out of the jealousies and the usurpations of neighboring seigneurs required the maintenance of a seigneurial army, and what had been a right, which had belonged exclusively to the king, of commanding military service of all his vassals, was henceforward claimed as a privilege by the seigneurs of the land. The establishing of these two claims of the independent administration of justice and the right of demanding military service were undoubtedly usurped prerogatives, were the virtual rejection of royal authority, and the substitution of seigneurial independence for kingly rule, and France was thus broken up into a number of feudatories that exercised independent rule without either regard to royal authority or to the popular will.

When Hugh Capet came to the throne, he was not in a position to overcome or control the powers which the seigneurs had usurped. As Count of Paris, he was himself a seigneur, and was only elevated to the throne by the aid of other seigneurs, both lay and ecclesiastical. He could not therefore have dared, even had he wished, to overthrow their independent power. The authority which he exercised differed in no-

thing from theirs, and his kingly authority was little more than nominal. The royal title still existed, and the old laws remained to establish his rights, had he been able to enforce them. The later Carolingians had indeed still claimed the prerogative of granting investitures. In 940, Louis d'Outremer confirmed to William I of Normandy the grant which had been originally made to Rollo by Charles le Simple, and in 964 Lothaire received the homage of the two sons of Hugh le Grand. But even this deference to the royal right of investiture was rather respect for an old practice, than the recognition of a right to exercise royal power. Had a seigneur refused to acknowledge the royal prerogative, the king had no power to compel any recognition of it.

On the contest for the throne between Charles of Lorraine, the last of the Carolingian line, and Hugh Capet, Count of Paris, very much depended, but I do not agree with some writers who think that if Charles had made good his claim, and had revived the power and authority of the Carolingian monarch by subduing Hugh Capet, he would have succeeded in bringing the other seigneurs to recognize his full prerogative. On the contrary I hold that by the entire removal of the popular element from any share in the administration the crown had lost its strongest and most reliable support, and would

have been unable to withstand any coalition of the barons, however feeble. In our review of the subsequent history of France, we shall find that in the struggle of the towns for enfranchisement, the king was enabled, through the support of the free citizens, to bring the barons again under his authority, and finally to overthrow the feudal system. At a period a little later the crown again encroached on the rights of the citizens, and deprived them one by one of the privileges which they had gained. The power of the king became supreme, and an arbitrary monarchy was established in France, which was only overthrown by the great revolution at the close of the eighteenth century.

Hugh Capet was Grand Suzerain of the realm, but his suzerainté amounted to nothing, and he could only, like the other seigneurs, administer justice in his own county. It is quite true that the other seigneurs did him homage and fealty, but as we have said this was more the observance of an ancient custom than a right which could be enforced. He had no power outside of his own domain, and in the common parlance of the day the territory of the king, the royal domain, was the *pays d'obéissance*, while all the rest of France was the *pays de nonobéissance*. What law was administered in the feudal courts it is impossible

to determine. The fullest information may perhaps be gathered from the Assises du Royaume de Jerusalem. At the time of the crusades the purpose was to divide the new territory gained in the Holy Land into seigneuries, and for the administration of these seigneuries a code was drawn up. But this code cannot afford us any very reliable information regarding the government of the seigneuries in France, for the circumstances were essentially different. Still we may gather from this code some idea of the legal administration of the seigneuries at home. Other information may be gathered from the Coutumes and Polyptyques of some of the monasteries, as the Coutume of Beauvaisis, or the Polyptyque of l'Abbé Irminon del'Abbaye de St. Germain des Pres. A few rules regulating the relations of a feudal baron with his retainers or as to the exactions of feudal dues have been preserved, but these afford no information as to the exercise of civil or criminal jurisdiction. The feudal barons as a rule had received a very limited education. They were ignorant of the great principles of justice, utterly unskilled in the weighing of evidence, and there can be no doubt that the justice administered in these baronial courts was of the most arbitrary character, or was generally determined by ordeal or wage of battle; yet it was final, and there was no appeal to any higher court.

But in his judicial administration the seigneur was assisted by his vassals, a certain number of whom sat with him as assessors, and who were also members of a council, and as such his advisors.

In like manner the king had his seigneurial court and council, but he stood in other relations to the whole of France. He was suzerain of the kingdom, and though in this wider sphere his authority was more nominal than real, yet there were circumstances out of which a closer relationship might in time develop. The independent seigneurs recognized this suzerainty, and while still maintaining their independence they yet did homage and fealty to the crown. There were duties which this homage and oath of fealty implied, and which, notwithstanding the dismemberment into the several feudatories, still continued to express the unity of the State. These duties could scarcely be said to be imposed in the sole interests of the crown. If, for instance, a war broke out against a foreign foe, and threatened the whole kingdom, then it was not only the interest but the duty of the greater vassals of the crown, the other grand seigneurs, to respond to the royal summons, and to range themselves under the king to contend against a common enemy. Likewise, when a judgment was pronounced on one of the grand seigneurs, and he was condemned as a

felon or a rebel to lose his fief, the king had the right to command the greater vassals, under pain of disobedience, to take arms against the guilty party, and assist in carrying out the punishment. These obligations were the consequence of the homage, or rather of the oath of fealty which had been taken to the crown.

If, however, the king within his own duchy, of which he was the seigneur by the same title as the other seigneurs held theirs, should make war on one of his own immediate vassals, then he could only require the aid of his own vassals, and had no right to summon the other grand seigneurs to assist him. If they did do so, it would only be as his allies or friends, and their refusal could not be regarded as any infraction of their duty.

## LECTURE XIII.<sup>1</sup>

### THE DEVELOPMENT OF THE JUDICIAL SYSTEM, ETC.—Continued.

In my last lecture, I spoke of the earlier forms of judicial administration in France with the virtual exclusion of the popular element, as well in the public assemblies as in the local courts. I also pointed out that in the confusion of the later Carolingian period the barons made encroachments on the royal power in the setting up of independent seigneurial jurisdiction and the exacting of military service. I further called attention to the double position which the king occupied as seigneur of the duchy of France, and also as grand suzerain of the kingdom. It followed from this double relation, in which the king stood as seigneur of the duchy of France, and on the other hand as grand suzerain of the kingdom, that there were two councils and courts, the one composed of the vassals of his own duchy, the other, in which the affairs of the kingdom were considered, a council composed of the greater vassals, the grand seigneurs of the realm. It might sometimes be difficult to draw an exact distinction between the jurisdiction of these respective courts, and the

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1. Books consulted :—The same as for last lecture.

king seems to have sometimes combined them into one court, to which he might, as occasion required, summon either the vassals of his own duchy or the greater vassals of the kingdom, just as the matter concerned one or the other order. The royal officials seem to have been the same for the two courts. It was a fundamental principle of the Frankish constitution, and especially of feudalism, that a man should be tried by his peers, so that a grand vassal could not be tried by a court composed of inferior vassals. At a period a little later, in the Etablissement of St. Louis, we read of a baron who was summoned before the royal court, and who pleaded that he would not be tried by any but his own peers, and it was therefore determined that three of the other barons of the same rank as himself should be summoned to adjudicate in his case. Should the peers of an accused vassal fail to put in an appearance, being detained by some necessary cause, we find that the court, though composed of lesser barons, might still proceed to judgment. This united jurisdiction of the immediate vassals of the king's own feudal domain, with a certain number of the grand vassals, was undoubtedly an accommodation, arising out of the difficulty of frequently bringing together any number of these greater vassals. It was nevertheless an infringement of the principle that a man

must be tried by his peers. A case which is of especial interest to us is that of King John, who as Duke of Normandy, was vassal of the King of France, and for his murder of his nephew, Arthur of Bretigny,<sup>1</sup> was summoned before the royal court, and we read from a manuscript produced by M. De Brial from the Cottonian library, "*Satis notum est quoniam Johannes de murthero Arthuris, nepotis sui, in curia domini regis Franciae per pares suos citatus, et per eosdem pares fuit legitime condemnatus.*" The words *pares suos* evidently imply that the court was constituted exclusively of the great vassals, John's peers. But when St. Louis was re-investing Henry III with a portion of the territory which had been taken from John, some of the barons having objected, Matthew Paris puts into their mouth the following expression, "*Absit enim ut duodecim parium judicium, quo juste adjudicatur rex Anglorum, et privatur Normania, cassetur et pro frivolo habeatur.*" Evidently, according to Matthew Paris, the constitution of the court was regarded as irregular, and the condemnation of John illegal.<sup>2</sup> Who

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1. Mons. Bémont in two articles in the *Revue Historique*, Sept.-Oct. and Nov.-Dec., 1886, endeavors to prove that John was not brought to trial for the murder of Arthur, but for previous charges that he had destroyed some monasteries, and had abducted Isobel, daughter of the Count of Angoulême, who had been affianced to the Count of la Marche.

2. Pardessus *Essai Historique sur l'organisation judiciaire*, p. 60.

were the *duodecim pares* mentioned, and how can the two assertions be reconciled? Historians very generally are agreed in thinking that the twelve peers are those of whom Phillip Augustus very shortly after constituted the great council or court. Six of the twelve peers who constituted that royal council were the great ecclesiastical peers, and it is very questionable if they took part in the trial of John. The six lay peers were the Dukes of Normandy, and Burgundy, with the Counts of Flanders, of Aquitaine, of Toulouse and Champagne. Normandy and Aquitaine belonged to John, and the Duke and Count were therefore not likely to take part in his trial. The Count of Flanders was absent on a crusade. The Count of Champagne was an infant of two years. The Count of Toulouse was in hostilities with Phillip Augustus, and the Duke of Burgundy was, therefore, most probably the only one of the six lay peers present at the trial. The vacant seats were no doubt taken by the vassals of the king's own domain. As I have said, this appears to have been a not uncommon occurrence; yet it was scarcely in accordance with the principle that a man should be tried by his peers, and may not inappropriately have called forth the objection to which Matthew Paris alludes. But this may serve as an illustration of how the royal courts were constituted. This constitutional body,

forming at once a judicial court and an advisory board, was very similar to the curia regis introduced into England by the Norman king, though the circumstances under which they existed in the two kingdoms were essentially different. If we may identify this royal court or council of the earlier Capetians with the great council, which more fully developed under Phillip Augustus, Louis IX and Phillip le Bel, we may remark a farther similarity with the curia regis in England, for as the judicial side of the English curia developed into the Exchequer court, and the courts of Common Pleas, and King's Bench, so the Council du Roi developed into the Grand Council, the Chambre des Comptes, the Parliament, the Council d'Etat and du Finance, and subsequently into some smaller courts.

The election of Hugh Capet<sup>1</sup> to the French throne in 987 marks a very important period of French history. It was a virtual revolution, which resulted in the overthrow of the reigning Carolingian family, and the accession of a new dynasty, but it is also a period when the feudal system became fully established in France. The Capetian family, so far as we can make out, was one of those whom Charlemagne, on his conquest of Saxony, had brought over to

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1. Hugh received the sobriquet of Capet, because he wore the cape of an Abbot of St. Martin de Tours.

France. He had given a portion of the Saxon land to the Obitrites<sup>1</sup> and had transferred the dispossessed Saxons to Western France, the old Neustria. Here we may readily believe Charlemagne granted to the Capetians land to which by their energy and force of arms, as well as by matrimonial connections, they added till the family became one of the most important in France. In the second generation, under Robert le Fort, the Capetian house held the territory between the Seine and the Loire, the most beautiful part of Western France, the most populous, having the richest cities, including Paris and Orleans, and the most fertile fields, the very garden and granary of France. Robert gained the appellation of le Fort from his brave exploits against the Normans, whom he more than once checked in their invasions and their advance on Paris. For these heroic actions, Charles the Bald granted him the counties of Autun, Nevers and Auxerre, as well as several immunities, while at the same time Robert gained the esteem, if in some degree the dread, of the western part of France. His eldest son Eudes was still in his minority when Robert died, and Hughes Abbé de St. Germain L' Auxerroix, who belonged to a Guelphic house, was appointed as regent, and by his energy and prudence maintained the

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1. *Annales Eginhardi* anno 804.

prestige which Robert had won. When in 886 Eudes entered into possession he was Lord of Anjou, Touraine, Marmoutier, and St. Martin de Tour, as well as Count of Paris, of Blois, and of Orleans, while he held important fiefs in Champagne and Poitou. On him devolved also the important duty of still protecting central France from the invasion of the Normans, and at the siege of Paris in 885 he distinguished himself in a degree so remarkable that his exploits were regarded as miraculous.

The power of the Carolingians had just then fallen to its lowest ebb. For within the short space of twelve years, from 877 to 888, had succeeded to the throne Louis le Begue, Louis III., Carloman, and Charles le Gros, to be followed by a king equally feeble, Charles le Simple.

The assignment to Eudes of the duty of protecting France from the attacks of the Normans was a virtual acknowledgment of the weakness of the royal house, and of its inability to discharge the more important functions of royalty.

Eudes was now without doubt the most important seigneur of Western France. He was as renowned for his vigour of mind, his high sense of justice, his piety and devotion to the church, as for his warlike ability. In the incapacity of Charles le Gros the eyes of the church, as well as of the seigneurs of France, were directed to Eudes, and on the death of Charles

he was elected to the throne. There is, however, some doubt as to whether he acted merely as regent for the infant son of Louis le Begue, Charles le Simple, or whether he received the crown by right of election. A late writer, Mon. Luchaire, a high authority, thinks that there was really a change of dynasty.

Eudes confided to his brother Robert his great seigneurial counties of Paris and Tours as well as several of his smaller fiefs. He strengthened his position by a treaty with the German king, Arnulf. The terms of the treaty were similar to those by which in the treaty of Verdun Charles the Bald was secured in possession of Western France, and Louis of Germany.

Eudes reigned for ten years, during which he was successful, not only in warding off the attacks of the Normans, but in establishing order, and making the royal authority to be recognized by the feudatories of Southern France. He was not, however, equally successful in dealing with the great seigneurs of the north, especially with those of Flanders and Champagne. When Charles le Simple had reached his thirteenth year he was consecrated at Rheims, and those northern seigneurs began to rally around him. Eudes, however, was sickening to his death, and before he passed away he urged all the seigneurs to swear fealty to the young representative of the Carolingian line. Possibly

as a return for this disinterested conduct of the dying Eudes, his brother Robert was confirmed by Charles in his several seigneuries, to which were added the abbeys of St. Denis, St. Germain des Pres, and St. Martin, all of which were indeed within the Capetian territory, though it is doubtful whether they had previously been under the count's authority. Robert showed a power and exercised an influence scarcely less than had been exercised by either Eudes or Robert Le Fort, and he secured to his son Hugh the undisputed succession to his estates. He still further strengthened his position by the marriage of one of his daughters with Heribert, Count of Vermandois, perhaps the greatest seigneur of France, and another daughter with Rudolphe, Duke of Burgundy. Once more the weakness and the arbitrariness of the Carolingians became manifest. Charles alienated the great seigneurs, and even the Archbishop of Rheims, one of a line of churchmen who had always been faithful to the Carolingian house. With the sanction, possibly with the urging, of the seigneurs, and of the archbishop, Robert seized the crown, and for the second time a member of the Capetian family occupied the French throne. He made with the German king the same arrangement as had been made by his brother Eudes. There was now every likelihood of a permanent change of dy-


nasty in favour of the Capetians, but it was not yet to be, for Robert had scarcely been seated on the throne when he was killed at the battle of Soissons, and once again the kingdom reverted to a Carolingian, Louis D'Outremer.

The house of Robert Le Fort had become one of the most powerful, most vigorous, and most popular in France, and the fact that a member of that family had already twice occupied the throne marked it as the most suitable for the sovereignty, in case of the deposition of the Carolingians, the most likely to contend with success in any struggle with the present feeble ruler, as well as the most fitted to restore the imperial unity, or to revive something of the glory of Charlemagne. The two houses had become rivals, and for some little time longer they might well watch one another's movements. Hugh, who had succeeded to his father's estates, could not expect any new grants from the reigning Louis, yet he added to his already extensive possessions, by his astuteness, and perhaps clever intrigue, while he extended his influence by well-chosen alliances. He now took to himself the title of Duke of France, a title vague indeed, and yet which seemed to convey military authority over a large and most important part of the kingdom, while it would naturally recall the title which had been assumed by the old mayors of the

palace, and suggest a similar succession to the throne. In taking this title he was really claiming the second place in the kingdom, and was virtually placing the Counts of Vermandois, of Champagne, of Blois, and the Duke of Normandy, as well as other great seigneurs, in a subordinate position. He also, through the marriage of his sister with Rudolphe of Burgundy, became, on the Duke's death, the Duke of Burgundy, and in 940 Louis D'Outremer was obliged to confirm his titles and dignities. Hugh, who had gained the name of Le Grand, died before matters were ripe for a change of dynasty, but his son, of the same name, inherited his father's vigour and pretensions. In 954 Louis D'Outremir also passed away, leaving the throne to Lothaire. This new succession afforded Hugh the opportunity of augmenting his power and his influence. He formed a political alliance with Henry of Germany, and on his death, with Otto I, the ablest monarch of his day, who shortly after succeeded to imperial power, and to the headship of the Holy Roman Empire. On the other hand, Lothaire quarrelled with Otto by endeavouring to gain possession of Lorraine. The weak Carolingian also sought to reduce the seigneurs to submission to the crown, but was unsuccessful. He suffered defeat in the battle of Poitou, and within a year died. The way now seemed open

to Hugh Capet. Charles, uncle of the late King Louis, and Duke of Lower Lorraine,—for the old kingdom had been broken up into two dukedoms,—was the last representative of the Carolingian family, and now put forth his claim to the crown. There was indeed an illegitimate son of Lothaire, Arnoul, but he had taken priest's orders, and had so destroyed any hope he might have of the succession. Charles was distasteful to the greater number of the French seigneurs, and he had also quarrelled with the Queen Dowager Emma. As Duke of Lower Lorraine he was a vassal of the German Otto, who had entered into a compact with Hugh Capet. Charles was therefore not in a position to offer a strong opposition to Hugh's accession, and for the third time a descendant of Robert Le Fort mounted the French throne. Hugh Capet must be regarded as the founder of the third dynasty of French kings. To secure the succession to the throne he caused, a few months after his accession, his son, Robert to be crowned in the presence of a large assembly of the nobles of France and Burgundy, which met at Orleans. This was not altogether a novelty even in the Capetian family, for Robert I, before his death at the battle of Soissons, had secured from Charles Le Simple the investiture of his son Hugh in all the patrimonial estates. In the Carolingian royal line, Lothaire had caus-

ed his son Louis to be crowned and associated with himself in the government, assigning him especially the government of the South. This practice was not infrequent in the subsequent history of France. In 1016 Robert II. ordered the coronation of his eldest son, Hugh, then only in his tenth year, and on his death in 1025 had the crown transferred to a second son, Henry. On Henry's full accession to the throne he caused the royal dignity to be conferred on his son Phillip, then a child of only seven years. A number of similar instances occurred later, and it was not at all uncommon for the heir to the throne to sign public documents, with his father as the *roi designé*. No doubt the several changes of dynasty led the kings to require the coronation of the heir in order to secure the succession to the throne, but out of this grew the principle of heredity, which became firmly established under Phillip Augustus. The accession of Hugh Capet marks a distinct period in the history of France and even of Europe.<sup>1</sup> In



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1. Mon. Thierry very strangely attributes the elevation of Hugh Capet to the French throne to the re-acquisition of power by the Gallo-Roman element, and the overthrow of the Frank or Teutonic. *L'Avenement de la troisieme race est, à proprement parler, le fin du regne des Franks, et la substitution d'une royauté nationale au gouvernement fonde par le conquête.* And he adds *L'identité nationale est le fondement sur lequel repose, depuis tant de siècles, l'unité de dynastie.* Lettre XII.

Mr. Freeman accepts M. Thierry's idea and says,

reviewing the past there seems to have been utterly wanting a definiteness of purpose; there was no guiding principle to direct and control the general development; there was progress but not improvement, there was no fixity in any of the elements of national life; there was an utter absence of any great constitutional aim, and indeed it was out of the anarchy and confusion which marked both the Merovingian and Carolingian periods that the feudal system grew. It was the result of the weakness of the central government, of the inability of the royal power to afford protection to its subjects, to give them that security and confidence which are so necessary to the development of a healthy social and political life. Under Hugh Capet royalty may be said to have reached its lowest ebb, for the power had already passed over to the great seigneurs. But it is well to remark that at that

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“The Gallo-Roman land now finally shook off the last relics of the Teutonic domination under which it had been more or less completely held ever since the days of Claudius,” and again, “Modern Celtic, Romance, Patrician France was now definitely called into being.” I fail to see the meaning of this last sentence. Mr. Freeman evidently identifies Western France with the old Neustria. But the land had undergone so many changes that the connection with the old Neustria was completely broken. Charlemagne no doubt purposely intended to destroy that old influence when he planted Saxons and other Teutons in that land, and further changes had taken place since. Brittany remained Celtic, owing to the large immigration of Celts from Britain on the invasion of the Saxons.

time when the government of France had become so precarious, Germany had acquired a high degree of consistency and strength through the powerful Saxon emperors—Henry the Fowler, Otho the Great, and his son Otho II.—to be succeeded by the scarcely less vigorous emperors of the Franconian line, especially Conrad II and Henry III.

The feeble reign of Henry IV and his humiliation by Pope Gregory VII was merely a temporary weakness, out of which the imperial power rose with greater might under the Hohenstauffens. But notwithstanding the able rule of these great Emperors, and the consistency which they imparted to the Empire, a consistency which seemed to point to an unlimited monarchy centuries before the French monarchy had reached that condition, they yet failed to accomplish anything permanent, and ultimately the Empire fell into weakness—scarcely less than France under the later Carolingians or earlier Capetians. The election of the Emperors, and the intervals of vacancy with contesting claims of rival candidates, afforded the opportunity for the German barons to assert their power, and extend their territories. Frederick Barbarossa and Henry the Lion almost divided Germany between them. But with the fall of Henry many of the dukedoms which, in both the south and the north, had acknowledged his

supremacy, were broken up into a number of small territorial lordships. His son Henry became Count Palatine, while his second son, Otho, succeeded to his much diminished dukedom, though he subsequently became Emperor. Austria passed to Henry VI (Hohenstauffen), while Bavaria, Tyrol, and Styria became independent, and several of the bishops, as well as the secular nobles, assumed feudal rights. For the next three hundred years the process of disintegration went on. Many of the old ducal families died out, and their territories were broken up into smaller parcels, each baron claiming to exercise feudal privileges. We have thus reached much the same point in the history of France and Germany, but through different processes. In France we have seen allodial proprietors, by usurpation and commendation, extending their territories and assuming greater authority, especially through the exercise of independent, military and judicial power. In Germany on the contrary we find great dukedoms broken up, divided and re-divided into smaller lordships, each claiming to exercise the independent authority which pertained to the larger, and also bishops acquiring a dignity and power, and exercising feudal rights, greater than pertained even to the French episcopates. The several smaller princes disputed the right of the Emperors to sovereignty over them, and

this caused incessant and bitter struggles between the central power and the independent feudatories, which very generally resulted to the detriment of the Empire. But the connection of Germany with Italy through the Holy Roman Empire was a still further cause of weakness. It was absurd to expect a perfect consolidation of the imperial power when the two great divisions were separated by the intricate and difficult passes of the Alps, when two distinct languages were spoken, and when the sympathies and interests of the people were essentially divergent. There were also several small principalities in North Italy, and certain important towns exercising independent municipal government, besides the estates of the church, and these each repudiated the sovereignty of the Emperor.

There were <sup>two</sup> too popes on the pontifical throne, Gregory VII and Innocents II and III, who were the successful rivals of the Henrys, the Othos and the Frederics, and who, if they were not the equals of the Emperors in military force, were more than their equals in subtilty of policy. The Emperors were not able to reduce the several powers in Italy to subjection, and the alliance of some of the Italian princes with German houses, as that of the house of Este with the German Guelphs, served to deepen the animosity which existed north of the

Alps, and to weaken the power of the Emperor in resisting the claims of the several rival dukes. The result was the establishment of feudalism in Germany, differing in some respects from feudalism in France, but perhaps scarcely less powerful. In France the feudal system ultimately became entirely subservient to the crown, largely perhaps because from Phillip Augustus succession to the crown became hereditary. On the other hand succession to the Empire depended on election, and this prevented the continuous exercise of any power to completely subdue feudalism, the more as the great barons, counts, and dukes in Germany held their territory by hereditary right.

## LECTURE XIV.<sup>1</sup>

### THE GALLICAN CHURCH AS A STATE CHURCH.

In previous lectures I have sought to give you some idea of the royal power of France, of the prerogatives and rights of the king, and also of the claims of the feudal barons during the period of the Merovingian and Carolingian rule, and at the accession of the Capetian dynasty. I shall now give you a short sketch of the Gallican church during the same period. It was essentially a state church, and was largely identified with the state in the several changes through which this passed. A church must, in my opinion, always be more or less a state church. To the mind of the ancients the church

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1. Books consulted.—*Capitularia Regum Francorum*, edit Stephanus Baluzins. *Corpus Juris Germanici* edit Fred Walter. *Recueil des formules usitées dans l'Empire des Francs*, edit E de Roziere. *Les elections Episcopales dans l'Eglise de France*, par Mon Imbart dela Tour. *Acta Karolinorum*, von Th. Sickel. *Die Cluniacenser* von Ernst Sackur. *Jahrbücher des Frankischen Reiches unter Kari dem grossen*, von Abel and Simson. *Jahrbücher des Frankischen Reichs unter Ludvig dem Grossen*, von Bernard Simson.

and state were inseparable, and the king generally was also the high priest. A church is bound to exercise some influence over the secular powers of the kingdom, though how far it may legitimately do this may be open to discussion. Certainly the circumstances in which the early Christian church was placed in regard to the falling Empire, forced the clergy to take a prominent place in the direction of affairs. The flight of Honorius from Rome, on the invasion of Alaric, compelled the bishop to act as mediator between the civic authorities and the Goths, and the continued absence of the Emperor left the supreme power almost entirely in the hands of the bishop. It is true that the Eastern Emperors through the Exarchs at Ravenna continued for some time to exercise authority over Rome, not only in the appointment to civic offices, but also to exercise the right of veto on the election of a bishop. But when the Eastern Emperor was obliged to withdraw his representative from Italy the supreme power became vested in the Bishop of Rome, who not merely exercised authority over the church of which he was the head, but over the secular officials of the city. Something similar took place in the provinces where the clergy generally came to the aid of the oppressed decurions, and in time to take a place in the provincial curiae.

After their conversion to Christianity the

Goths came into relations to the church not less close than those which existed between the clergy and the Christians of the Empire. The superstitious devotion which the Goths in their German home had paid to their deities, and their reverence for their priests, were naturally transferred to their new object of worship, and to the clergy of the Christian church. They soon came to look on the church as an organization which was to direct not merely their individual and domestic, but also their civic life, and they identified it largely with the interests of the state. Indeed they regarded the church as inseparable from the state, as a part of the body politic. Under both the Merovingian and Carolingian kings, the bishops and abbots took their seats in the royal councils with the dukes and counts, while the kings, dukes, and counts are often mentioned as taking part in the synods and councils of the church, and these assemblies only met as they were summoned by royal command. This close connection between church and state could not but affect their several relations, and the circumstances which affected the political life also affected the life of the church. From the time of Constantine, when Christianity was recognized as the state religion, the churches received large gifts of land, and this especially in the province of Gaul. As I have before mentioned the Franks do not seem to

have disturbed the churches in the possessions which they held, but rather still further enriched them, while also by bequest and commendation the church estates grew to be the largest and richest in the kingdom. The bishops and abbots became great feudal seigneurs, enjoying the same privileges, and exercising the same rights, but also subject to the same obligations as the lay seigneurs. But this close identification of the clerical with the lay nobility rendered them liable to the same changes, and we find that the church passed through the same phases of constitutional life as the state itself. An ecclesiastical society may be differently constituted. It may be monarchical, aristocratic, or democratic. The Roman church, however, has always been opposed to a democratic church as inconsistent with its fundamental principles, and it has therefore excluded the lay or popular element from any participation in its government. The Gallican church, as it has maintained some degree of independence, and has preserved its separate constitution, has been essentially aristocratic, and episcopacy has prevailed. The tendency has been to strengthen this aristocratic character, and this has manifested itself in several ways. The metropolitans exercised supreme authority in their archdioceses, while their suffragans exercised only a less authority in their more limited spheres,

and in like manner the abbots ruled their extensive abbacies. In the synods and councils the dignitaries of the church alone sat, and the inferior clergy had no part in these assemblies. The vast possessions of the bishops and abbots gave them a special importance, and as we have just stated, they took their place among the princes and nobles of the kingdom. Indeed their rich possessions were very often objects of envy, and leading nobles eagerly sought appointment to those high sacred offices, not from religious motives, but rather on account of their rich revenues, and the great influence which they afforded. Perhaps the question which most agitated the Middle Ages was that of investiture, and the right of election of bishops. In the earlier centuries the election of bishops rested with the clergy and the people. The maxim seems to have prevailed, that whom all should obey should be elected by all. The Christian church as then undivided was considered as the whole body of believers, who were supposed to be actuated by the same motives, united by the bonds of the same faith, and governed by the same principles of brotherly love, and might therefore be expected to have the same interest in the government of the church, and in the election of those in whose hands was placed the administration of its affairs. After the seventh century the crown began to exercise authority

over the Gallican church. The king summoned the councils, and it apparently required his sanction and his edict before the terms of the councils could be carried out.<sup>1</sup> As in every other sphere of government the king was supreme, and appointed to the several secular offices, so he also asserted his right to nominate to the offices in the church, and bishops and abbots received their appointments from him. Very frequently the king gave the privilege to the clergy and the people to elect to a vacant diocese,<sup>2</sup> but even in the case of such a concession it was necessary that his representative should be present in the meeting where the election took place, or the elected was required to appear in person before the king and receive his sanction. The king not only sometimes rejected the bishop-elect but also passed judgment on any bishop or abbot who was accused of improper conduct.<sup>3</sup> Charlemagne on several occasions censured the bishops who were negligent of their obligations,

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1. Vid. *Praeceptio glorissismi regis Guntranni edita in conformatione concilii*, anno DLXXXV, Baluz T. 1, p. 9. et *Edictum Chlotarii regis in concilio Pariensensi* V anno DCXV, Baluz, *capitularia* T 1, p. 22.

2. *Formulae Marculfi*, Baluz capit. T 11 p. 379 concessio civium pro episcopatu, et *indiculus regis ad episcopos*. Glasson *hist. du Droit* T. 111 p. 592.

3. *Epistola increpatoria ad monachos sancti Martini Turonensis*. Capit edit Walter T 11 p. 196.

*Lotharii imperatoris edictum de restitutione Ebbonis archiepiscopi Remensis*. Walter T 111 p. 262.

and enjoined a strict observance of their duties, which he carefully enumerated. He also gave orders to his Missi to report as to their conduct,<sup>1</sup> as to the maintenance of the several services, and as to the condition of the churches and other sacred buildings. Councils of the bishops and abbots were also frequently summoned by the king, and there is an *epistola* of King Sigibert forbidding the assembly of a council without the permission of the king.<sup>2</sup> The subjection of the churches both in France and the north of Italy to the French king or emperor is quite evident. The great contest regarding investitures had not yet begun. The popes in the struggle with the Lombards were too much dependent on the kings or emperors of the Carolingian line, and later on the German emperors, to strongly assert their claims to supreme authority,<sup>3</sup> and it was not till the accession of Hildebrand that the papal power assumed that position which it subsequently held for some centuries. I cannot accept the view which was held by some writers of

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1. *Epistola generalis ad archiepiscopos regni Francorum*, anno DCCCXI. Baluz Cap. I T. p. 483. *Capitulum de purgatione sacerdotum*. *Capitula data missis dominicis* anno 802. Baluz I p. 365.

2. Baluz Cap. T. 1 p. 142.

3. *Annales ecclesiastici* edit Baronius, T IX p. 216 concessum fuisse ab eodem Zachario Pippini regi Francorum; also Imbart de la Tour, *Les elections episcopales* p. 92.

the eleventh century, and which has been renewed by some later church historians, that the authority which the kings exercised over the bishops and abbots was limited, and was a simple concession by the popes.<sup>1</sup> It is very doubtful if the delegation of power by the popes ever occurred, for it might affect their claim to infallibility. A limited authority on the part of the kings, in regard to the appointment to high offices in the church, would on the other hand have been inconsistent with that supremacy which the king claimed in every other department of government. At a period a little later, under the weaker Carolingians, we do find that an appeal was sometimes allowed from the courts of the kingdom to the papal court, but there is no mention of such under the earlier Carolingians, or even under the Merovingians. There is another view entertained by some that the relation between the king and bishops or abbots was simply a feudal relation. The king was grand suzerain of the realm, and the bishops and abbots holding their possessions by feudal tenure commended themselves to him, and were thereupon put in possession of their estates. On account of this feudal relation it was therefore only reasonable that he should

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1. Glasson *Hist. du Droit* T. III p. 599 has some very forcible remarks on the earlier position of the papacy.

have a voice in their investiture, if not in their election. Mon. Luchaire, a late historian, seems inclined to accept this view, and quotes with apparent approval the statement of Ive de Chartres.<sup>1</sup> "What does it matter in what form the concession was made, the important fact is that the kings did not intend to confer anything spiritual. They only yielded to the wishes of the clergy, and granted to the elected the Episcopal honours and secular possessions which churches generally obtained from the royal munificence." There can be no doubt that the bishops and abbots holding their estates by feudal tenure were required to do fealty and homage, and to discharge the obligations which that tenure implied.<sup>2</sup> There are capitula which especially deal with these tenures,<sup>3</sup> but these are essentially different from those which treat of the election of bishops or of their qualifications for their episcopal office.<sup>4</sup> When France came

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1. Luchaire Hist. des Inst. Mon. de la France sous les premieres Capetiens T. 11 p. 83 Mon. Luchaire has, however, modified his views in his later contribution to Mon. Lavissee's History.

2. Strangely enough M. Flach maintains that the bishop was not required to discharge the feudal obligations "Les services qu'il engageait etaient del'ordre spirituel" Flach L'Ancien Franc T. 1 p. 107.

3. Vid. Notitia de monasteriis quæ regi militiam donare, vel solas orationes debent. Baluz Cap. T. 1 p. 589.

4. Formulæ dans l'empire des Francs Rosiere T. 11 D. XII.-D. XVII. In these several formulæ the moral and literary qualifications of a bishop are clearly pointed out, and there is no allusion to their feudal tenure.

wholly under feudal rule the seigneurs exercised independent power, and there were cases where the bishops and abbots were appointed by them. We have no means, however, of knowing to what extent this practice prevailed, or for what length of time, and under any circumstances the number of such cases must have been limited, as in many instances the bishops themselves were great seigneurs.<sup>1</sup>

In England, in early Anglo-Saxon times, the mode of election differed from the mode in France. It was the Witenagemote that made the election, though in some cases it seems to have been made by the people of the diocese. The people, however, were no doubt the general clergy and the Thegns, *minores* as well as *maiores*. A little later the election was made by the cathedral chapter, though in any case it required the ratification by the Witenagemote. The Norman Williams I. and II. preserved the practice to which they were accustomed in France, and retained the choice in their own hands. Henry I. in the earlier part of his reign followed the practice of his father and brother. By the compromise with Anselm the election was to be made by the chapter, but in the presence of the king in the royal palace. In Edward I's reign Phillip de

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1. Lavissee Hist. par. M. Luchaire II 2 p. 108. I think however that M. Luchaire rather overestimates the power of the feudal lords over the church.

Staunton was elected by the chapter of the cathedral of Landolf, but had to present himself to the king for the ratification of the election.<sup>1</sup>

The question naturally suggests itself as to what part the pope took in the election to French bishoprics and abbacies. He was the head of the church and claimed to exercise supreme administrative and judicial power. In the ninth century the subjects on which the higher clergy were examined, and also the form of consecration, were borrowed from Rome, yet the popes do not seem to have taken any part in the clerical elections, and their authorization was not necessary before proceeding to consecration. A metropolitan required to receive his pallium from Rome, and in so far the election may have been regarded as subject to the pope's ratification, yet there are some instances where the king ordered the consecration of a bishop in opposition to a contradictory mandate of the pope.<sup>2</sup> But the popes did not claim the right to nominate bishops in the Gallican church or even in that part of North Italy which was immediately subject to the Emperor. They, however,

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1. Councils and ecclesiastical documents edit. Hadden and Stubbs, Vol. I P. 582.

2. Beyond the papal states the popes do not seem to have exercised authority in the election of bishops, and within those states it was simply the obedience of suffragans to their metropolitan. Imbart de La Tour, *Les elect. epis* p. 135.

strongly insisted on the election being left to the clergy and barons (Les grands) of the diocese.<sup>1</sup> But while the power and influence of the papacy developed, the Gallican church still continued to maintain its independence. With the revival of the royal power under Phillip Augustus, Louis IX and Phillip le Bel, the seigneurs certainly ceased to nominate to the clerical offices within their seigneuries, and the kings renewed their claim to appoint to such offices. A little before this, under Hildebrand, began the great contest with regard to investitures, a contest which lasted for over two centuries. The demands of Hildebrand resulted in the election of the bishops by the cathedral chapters, though the king still claimed that the election, in order to be valid, required the royal sanction. Now under the Merovingians as well as under the later Carolingians the church fell into great disorder. The writers of the period give us a very sad picture of the immorality of the clergy, and especially of the higher clergy. Simony almost universally prevailed, and it is scarcely to be expected that those who gained their clerical position in this improper way would administer their office with conscientious care. They were

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1. Epistola Hadriani Carolo regi 8, edit. Muratori III. p 2. p. 269, in which the pope urges Charlemagne to restore Marcarius to his duchy, and Maricius to his bishopric.

too often men without principle, who gave loose reign to their vilest passions. They spent the revenues of their rich bishoprics in the grossest indulgence, often living in open concubinage. The result was that the harmony and unity of the church was almost completely destroyed. The lower clergy became separated in their sentiments and interests from the higher. They were in the utmost distress and poverty, while the bishops were, with few exceptions, spending their substance in riotous living. Charlemagne sought to bring about a reformation not only in the life of the clergy but also in the church's administration. There was scarcely any metropolitan power, and councils had been rarely summoned. Charlemagne's first measure therefore was to restore the power of the metropolitans, and to assemble the bishops and abbots in councils. He sought by these means to give to ecclesiastical government some measure of unity and regularity. He caused codes of church discipline to be formed, and ordered that they should be strictly observed. But Charlemagne might not have been successful in accomplishing the work he designed, of reforming the administration of the church, had he not been aided by individuals working independently in the same direction. We must distinguish between the different orders of the clergy, between the regular orders and the secular priests.

The first term is applied to the monks who belong to some one or other of the religious orders of the church. These orders, especially that of the Benedictines, laboured for the improvement of their members in the regulation of their daily life, combining with their sacred offices a system of education, of duties, and relaxations, and they also sought to diffuse their principles and their system among the people generally. In 760, shortly before Charlemagne ascended the throne, Chrodogand, Bishop of Metz, struck with sadness at the disorganization of the church, especially of the secular clergy, and with the difficulty of governing the priests living apart each in his own fashion, undertook to subject those in his own diocese to a uniform rule, in fact to constitute them into a society analagous to that of the monasteries, and he formed rules very similar to those which governed the order of St. Benedict.<sup>1</sup> This was the commencement of the constitution of canons out of which the chapters arose.<sup>2</sup> From this time the organization of the clergy of the Episcopal churches into chapters became very general, till Louis le Debonnaire in a council call-

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1. Guizot *civ. en France* lect. 26, *Regula Chrodogandi Metensis episcopi*; also *Fontes juris ecclesiastici* edit. F. Walter.

2. St. Augustine had proposed something similiar to this constitution of Canons.

ed at Aix La Chapelle in 926, had a rule of canons drawn up in 145 articles, which he applied through the metropolitans as the uniform discipline of the churches throughout the kingdom. As I have said, the revenues of the churches had passed into the treasury of the bishops, but now the constitution of the canons, and the residence of the priests of the cathedral with the bishop regulated this to some extent, as they exercised in the chapters some control over the finances of the diocese. Monasticism had fallen into evils somewhat similar to those of the secular clergy, and a reformation was needed here also. The rules of the Benedictine order had become very much relaxed, but a reformation was brought about principally through the instrumentality of Benedict of Aniane, who sought to restore the rule of his great namesake, Benedict of Nursia, who had founded the order.

It was in keeping with these movements that Charlemagne affected a reformation not only among the secular clergy, but among the regular orders also. He sought to place all the church orders of his extensive kingdom under the same rule, and to form a united western Christendom. The large number of Capitula which he issued, and which bear on church matters, show how largely these absorbed his attention, but also how completely

the church was subject to his control. All the canons, all the measures relating to the Gallican church at that time were published under the authority of the temporal power. We need only refer to the various acts of the councils to prove this. But the church was also subject to the judicial power of the state. Charlemagne expressly ordered "that the Missi were to inquire whether there be any cause of complaint against a bishop or abbot, a count or any other magistrate whatsoever and inform him." "They were to examine, if the bishops lived according to canonical rule, whether the abbots lived according to rule, whether they thoroughly knew the canons, whether the monks observed the canons, if in nunneries they also lived according to canonical rules. They were to inquire very minutely as to how the clergy in their various ranks conducted themselves; as to their moral life, and as to the religious services."<sup>1</sup> These orders to the Missi, as well as the several capitula, show how close a scrutiny Charlemagne exercised in all matters ecclesiastical. Louis le Debonnaire and Charles the Bald continued to assert their rights as Charlemagne had laid down in his capitula, but they were comparatively weak men, and though they issued capitula similar to those issued by their great pre-

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1. Capitula Caroli Mayni anno 803 Baluz T. I.

decessor these did not carry the same force. Everything ecclesiastical had undergone a change, and though the Carolingian kings continued to nominate to bishoprics, the usurpation of power by the clergy was very great. What a contrast with the state of affairs under Charlemagne is this very humble declaration by Charles the Bald: "By his election and that of the other bishops, and with the will, consent and acclamation of all the other faithful of our kingdom, Wenilon in his own diocese in the city of Orleans, in the cathedral of St. Croix, in the presence of the other archbishops and bishops consecrated me king according to the ecclesiastical custom; and in calling me to reign he annointed me with the Holy oil, gave me the royal diadem and sceptre, and led me to the throne. After this consecration I could not be cast from the throne nor supplanted by any one, at least not without having been heard and judged by the bishops, by whose ministry I was consecrated king, and who have been named the throne of God. God rests on them, and it is through them that He decrees His judgment. I have always been, and am at present, ready to submit myself to their paternal correction and their castigatory judgment." Compare this

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1. Capitula Caroli Calvi anno 859 t. XXX Baluze II, p. 133.

language with the language of Charlemagne's capitula and you will at once see the complete change in the condition of the parties. The bishops were beginning to assume a position which seems to have raised them above the royal power, while the popes interfered much more frequently in the election of bishops. They were quite prepared to take advantage of any opportunity which offered. A translation from one bishopric to another could not be effected except by the intervention of the pope. It was a virtual divorce<sup>1</sup> in which the earlier bond of union could not be dissolved without the consent of the head of the church. This gave him the right to intervene as in the case of Bishop Actard, who had been driven from his Episcopal see of Nantes by the Normans and Bretons. A council met at Soissons and petitioned the pope that he might be translated to another see. After some delay this was granted and Actard was appointed by the pope to the bishopric of Tours. Several similar instances occurred which seem to have afforded opportunity for the pope's intervention. Something of the same kind took place in a case of deposition, for the pope claimed the sole right to depose a bishop from his clerical office, but the

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1. The Pseudo-Isidorian decretals present this view and lay the utmost stress on this marriage bond, and pope Nicholas I made use of this.

Pope who confirmed the deposition claimed the right to make a new election. These are some instances showing how the Pope claimed to intervene more and more in the affairs of the Gallican church. Hincmar, the Archbishop of Rheims, as a little later Arnoul of Orleans, and still later Brunon of Angers, fought vigorously against these encroachments, but with very partial success, for by the middle of the ninth century the pontifical interference in episcopal elections became very evident. The efforts of the papacy in this direction were no doubt very greatly aided by the production of the Pseudo-Isidorian decretals, which appeared about this time. These decretals, which now every one admits to have been forged, claim to be a collection of the decrees of the Roman bishops of the first three centuries and of acts of councils. Their main object was the elevation of the papacy, and to establish its supreme authority.<sup>1</sup> Indeed from this time the papacy sought to weaken the aristocratic episcopacy of the Gallican church by lessening the power of the metropolitans, by fostering the chapters, and increasing the power of the abbots. But though in the outer life of the church the authority of the papacy was becoming supreme, yet the in-

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1. Luchaire adheres to the view expressed by Dollinger and others that Mans was the home of the decretals. This is doubtful vid. Simson, *Historische Zeitschrift* B. 68, 1892.

fluence of Charlemagne on its inner life did not wholly pass away. The partial reform which he accomplished through Alcuin, and the impulse which he gave to learning implanted seeds which though they long lay dormant became vitalized in the literary movement of the twelfth and thirteenth centuries. They also bore fruit in the great monastic revival, and in the re-awakening of learning as presented in the labours of Laufranc and Anselm, of Abelard and Arnold of Brescia and their great rival Bernard of Clairvaux, of Rosalimus and William of Champeaux. Charlemagne also established schools out of which the University of Paris was developed.

## LECTURE XV.<sup>1</sup>

### THE GROWTH OF THE PAPACY AND THE FOUNDING OF THE HOLY ROMAN EMPIRE.

In my last lecture I gave an outline of the earlier history of the Gallican church. I shall now give you an equally short sketch of the Papacy, especially in its relations to the Empire. The rise of ancient Rome to power had been gradual, though a keen observer in the earlier days of Rome might almost have predicted the marvelous growth of her power. In her wars with the Latins, the Sabines and the Samnites, she was struggling for her independence. The same may be said of her wars with Pyrrhus, and with the Carthaginians, but from the day when Hannibal was overthrown, the position of Rome

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1. Books consulted :—*Rerum Italicarum Scriptores* T. III, pt. 2 *Vitæ Pontificorum* edit, Gian Fr. Muratori. *Liber Pontificalis* T. I, edit. M. Duchesne. *Vita Caroli et annales Einhardi*. *De Civitate Dei*, St. Augustine, *Die politik der Päpste*, von Rudolph Baxman. *Geschichte der Entstehung und Ausbildung des Kirchenstaats*, von Samuel Sugenheim. *Geschichte des Verhältnisse zwischen Kaiserthum und Papsthum*, von Bernhard Nihues. *Acta Caroli* edit. TH. Sickel. *Die Anschauungen von Staat und Kirche im Reich der Karolinger*, von Heinrich Lilienfein. *Die Sogenanten Schenkungen, Pippins, Karls des*

was changed, and she henceforward strove for universal Empire. But, as I remarked in a previous lecture, her constitution was not adapted to her great expansion, and she bore within her the seeds of her dissolution. For some four centuries she was without a rival. At length the sovereignty became little more than a mere tradition, yet a tradition dearly treasured in the memory of later Romans, who might hope one day to see that sovereignty in some form or other renewed. There was, however, a power which had arisen in Rome, soon to put forth new claims to universal rule. Christianity has always claimed to be a universal religion. This is one of her distinctive features, and at no time can she have been regarded as a mere national religion. Resting on this distinctive characteristic of Christianity, and gathering to himself the traditions of Rome's universal sovereignty, the bishop of the eternal city in course of time put forth claims to a sovereignty equally extended, and even more powerful.

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Grosse, und Otto I. von TH. Lindner. Das privilegium Otto I für die romische Kirche, von TH. Sickel. Die Sogenante Carolingische Schenkung von 774, von B. Kehr, Historische Zeitschrift B. 70, 1893. Zur Verstandigung über das Schenkungsversprechen von Kiersy und Rom. Von Adolf Schaub. hist. Zeitsch B. 72, 1894. Epistolæ Gregorii Papæ I edit. P Ewald und L Hartman Die Geschichte der Deutschen Kaiserzeit von Wilhelm V. Gie sebrecht.

In attempting to sketch the history of any state it must be our primary object to find out the principles of its development. It cannot be that its growth has depended merely on fortuitous circumstances, but as little, on the other hand, can we accept the teaching of the Positive School that it has been entirely subject to natural laws, where human agency has been simply the instrument rather than the guiding spirit. It is quite possible that the great leaders of thought or of action may not always have been conscious of the direction in which they have been working. To very few legislators has been given the power to look down the vista of coming generations so that a direction may be given to future development. But notwithstanding the want of clear definiteness of purpose in administration there have undoubtedly been great principles, which have been the fundamental principles of a nation's life, and along the line of which it has slowly advanced. To discover these principles we require to study closely the facts of history, for it is from a knowledge of these facts that we can alone read the policy and the aims which have directed and controlled a nation's development in the past, and may gather lessons which may prove serviceable in the future. No state has ever been more consistent in its purpose, or more successful in the accomplishment of that purpose than the Papacy. How-

ever varied may have been the circumstances in which it has been placed, or the difficulties with which it has had to contend, the Papacy has throughout long centuries never changed the principles of its policy. From the earliest centuries it has been more of a political than a religious body. It aimed at being the guiding spirit in European politics, and for long it was successful in its purpose, and there was scarcely a great political movement throughout the middle ages with which the Papacy was not associated, or which it did not control. Already in the middle of the fifth century St. Ambrose and St. Augustine maintained the right of the Pope to supremacy. In his treatise *De Civitate Dei*, Augustine in a long and varied argument maintains the Divine sovereignty of the world, and insists that the church is the medium through which that sovereignty is manifested. Even the power and glory to which heathen Rome attained was, he says, by Divine permission, by the loving kindness of God, who causes His sun to shine on the evil and the good, and the rain to fall on the just and the unjust. The universal dominion of Rome, however, was intended to open the way to the universal dominion of the church, and to which the church rightly succeeds. Augustine very strongly repudiates the idea which the heathen of his day maintained

that the fall of Rome was due to the evil machinations of the Christians, who, it was said, had sought to destroy the influence of the tutelar deities. On the contrary, he insists that it was due to the moral degradation of the Romans themselves, and that Rome was the rather indebted to Christianity for the respect which Alaric and his followers had shown for the Christian temples, and the preservation of the lives of those who took refuge in them. He uses this as an illustration of what he maintains throughout the treatise that the only safeguard of the state is in its submission to the church, in fact its identification with the church. He draws a distinction between two states (*Civitates*), the secular and the ecclesiastical, or the earthly and the heavenly. The one partakes of the nature of all earthly things, and is not only changeable and of limited duration, but also liable to the evils and the errors to which human society is ever prone. The heavenly state is that where the direct agency of God is ever manifesting itself, and which is therefore endless and unchangeable, and this is the church. The only hope therefore of the prosperity of the earthly state is in its complete union with the church which is supreme. It is through the church alone, that is to say, through the administration of the hierarchy alone, that man can be secure of the direct agency

of God upon the soul, or that society can be preserved from immorality and ultimate ruin. The will of man should therefore surrender itself to the clergy, for in them Divine grace is vested, and through them is distributed to mankind. Righteousness exalteth a nation; but as St. Paul says the individual man is made righteous through grace, so, Augustine declares, the grace of God is equally necessary for the righteousness of the state, and this grace can only be received through the church. A state can only fulfil its divine mission and be developed in virtue and righteousness as it receives, through the church, the grace and the purity which are the influence of the Divine Spirit. But in this way is the earthly state incorporated with the spiritual, the temporal with the kingdom or the church of God which is eternal. It is the church which can afford the true guidance of Christian faith and life, by which not only the individual but the state may enjoy peace, that peace which can alone exist between the mortal and the immortal, between a man and his God.

The treatise *De Civitate Dei* is not the work of a statesman, but of an ecclesiastic. Augustine never allows the possibility of the church failing in its purpose, or ceasing to be influenced by the Spirit of God. The infallibility of the church underlies his whole system.

It is the salt giving its savour, its tone, and preserving qualities to the earthly society, and he never apparently thinks of asking what if the salt should lose its savour. But Augustine struck the keynote of all the future history of the Church of Rome, a key note which found its later and strongest expression in the Pseudo-Isidorian decretals, in the *Dictatus Papae* of Gregory VII., and the Bull *Unum Sanctum* of Boniface VIII. The views of Augustine found very general acceptance in the Western church, or perhaps it may be more correct to say that they were the expression of the dominant opinion of that portion of the church. After centuries of sadness and suffering, during which the Roman state had fallen to ruin, the church, strengthened if not purified through severe persecution, had been chiefly instrumental in restoring some degree of peace. The repeated storms, from whatever direction they had come, had not impaired her vitality, and she had used the victories gained by Visigoth and Ostrogoth, by Burgundian and Frank, in extending her authority. A succession of bishops, not merely of Rome, but throughout the provinces, had by their force of character, their Christian lives, and by the sympathy and the shelter which they afforded, endeared themselves to the people of every class. This is perhaps especially noticeable in the character and conduct of Gregory

the Great, than whom no Pope was more worthy of confidence. It was this sympathy of the general mind of western Christendom with the life and exertions of the church which constituted her strength. It was quite in keeping with this spirit that the bishop of Rome was gradually rising to supremacy, and the tone of authority in which his decrees had been couched had not yet jarred any cord of jealousy or suspicion. It was only at a later period that the conscious strength of the Popes assumed a bolder tone, and they put forth a claim to infallibility, and to the sole dictatorship over the Christianity of the western world. But it is not astonishing that in the present contentment no one apparently discerned the evils which that claim to infallibility and supremacy would ultimately entail. For long the Bishop of Rome had remained subject to the eastern Emperors. At length at the end of the seventh century, the relation with the east was completely broken. The Lombards had invaded Italy and had acquired possession of the greater part of the peninsula, so that Rome was surrounded by them, and each year the danger became more threatening. The letters of Pope Gregory I are full of details of the perils of the church and the sufferings of the Christians. He besought the aid of the eastern Emperor against the invaders, but the Emperor was either unwilling or unable to render such assistance.

Still for nearly a century after Gregory the Great, the Popes remained attached to the eastern Empire. At length the continued pressure of the Lombards, and the hopelessness of expecting help from the east compelled the popes to look elsewhere. The iconoclastic contest had been revived, and tended to finally destroy any connection between the Empire and the Papacy.<sup>1</sup> The kingdom of the Franks was the strongest in the west, and an appeal was sent by Gregory III. to Charles Martel,<sup>2</sup> and with the appeal was a gift of the keys of the tomb of St. Peter, but Charles' attention was turned elsewhere. A little later, Pope Zacharias sanctioned the usurpation of the French throne by Pippin,<sup>3</sup> and Stephen II shortly after made his way over the Alps to meet Pippin, and personally implore his aid in driving back the Lombards from the gates

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1. Baronius anno 794.

2. Liber Pontificalis T. 1 p. 457, note 17 and p. 424 note 34.

3. The coronation and anointing of Pippin by Boniface was the first occasion on which the right of consecration and anointing had been observed in France and it is suggested that Boniface had been familiar with it in the coronation of the English kings. In the present instance Boniface was acting under a commission from the pope, and it seems that it was regarded as implying the special sanction of the pope to Pippin's usurpation, and perhaps also the dependency of the French crown on the papacy. Pippin, as well as his two sons Carloman and Charles were again crowned by pope Stephen on his visit to France. *Epistola Zachariæ papæ ad dominum Pippinum* Muratori S. R. Ital. T. III. pt. 2, p. 100.

of Rome. The Pope and King met at Ponthieu (Pontico), but afterwards removed to Quercy (Curiasicum). Here Pippin promised to make war on Aistulf, the Lombard king, and to restore to the Pope the Exarchate of Ravenna, and the other territories which it was claimed had belonged to the *Res-Publica Romanorum*, of which the Pope maintained he was the sole representative. The terms of the agreement were certainly engrossed in a written document signed by Pippin and his two sons, Carloman and Charles, and attested by all the nobles present. The document, which was immediately placed in the papal chancery, has been lost, or more probably destroyed, and any knowledge of it is derived from the *Liber Pontificalis*.<sup>1</sup>

After the death of Pippin the Lombards again invaded the Roman territory, and Pope Leo III was obliged to appeal to Charlemagne for help. The great Charles descended into Italy, defeated the Lombards, and advancing to Pavia, the Lombard capital, he placed on his own head, by his own hands, the crown of Lombardy, thus declaring himself King in place of the reigning Desiderius, whom he is said to have consigned to a monastery. A little later, passing on to Rome, he received from the Pope before the great altar of the old basilica of St.

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1. *Liber Pontificalis* T. I., p. 448 et p.p. 449-488.

Peters, on Christmas, 800, the imperial crown, and was proclaimed Cæsar Augustus. The Pope now demanded the carrying out of the agreement made at Quercy. Charlemagne does not seem to have held himself bound by that treaty, though according to the *Liber Pontificalis* he was a party to it, and his signature had been duly appended. However, after a short delay, Charlemagne renewed the act of Pippin, and restored to the church the territory which had been held under the earlier treaty. It is impossible to determine what was the extent of territory ceded. This later document has shared the fate of the earlier, and we are still indebted to the *Liber Pontificalis*, and to the several letters of the Popes, for information. How far we can trust to testimony, which is too evidently of a partizan character, is very doubtful. The document must have been of very great value. It must have expressed in precise and legal terms, as was the case in all the documents of Charlemagne's reign, the relations in which the Pope and King now stood to one another, the relations indeed on which the Holy Roman Empire was founded. Its loss compels us to seek information wherever it can be found, while it requires us to use great care and judgment in forming an estimate of the value of any evidence which we may obtain. I have already stated that certain relations had existed between the

eastern Emperors and the Bishops of Rome, and that the election to the Holy See required the imperial sanction, while certain dues were paid by the newly elected to the imperial treasury. On the overthrow of the imperial power by the Lombards, it is doubtful if any sanction was required for the papal elections, or any dues paid.<sup>1</sup> Theodoric the Ostrogoth certainly did seek to revive and enforce these claims on the occasion of the election in 526 of Felix III. or IV., whom indeed Theodoric is said to have nominated.<sup>2</sup> The conquests achieved by Charlemagne paved the way for a rapid expansion of the church, at the same time that they extended the power of the French crown. The greater part of the continent became subject to him. He was gifted with great force of character, he had regulated the affairs of the Gallican church, and had brought it into complete subjection to himself, and now that he had entered into relations with the great head of the church he was certainly not likely to neglect the assertion of his own authority. He had granted or restored certain territories to the Pope, but he seems to have insisted that these territories should be held or retained only on certain conditions. The treaty, in which these conditions were undoubt-

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1. *Liber Pontificalis* L. II., P. 50, note 3.

2. *Variae* Cassidori lit. VIII. 15.

edly specified, having been destroyed, we must have recourse to such authorities as we can find.

Strangely enough, Eginhard, Charlemagne's secretary and biographer and reported son-in-law, gives us very little information on the subject. He simply mentions Pippin's earlier restoration to St. Peter of the Exarchate and the Pentapolis, and in his *Annals* he states that after the coronation of Charlemagne as Emperor in 800, the Pope did homage to him. When in 796 Pope Leo III sent to Charlemagne the keys of St. Peter's tomb, and the banners of the city,<sup>1</sup> with the request that he would send one of his nobles to Rome to administer the oath of fealty, there can be no doubt of its significance. In the letters which Charlemagne addressed to the new Pope, evidently in answer to this request, he congratulated him on the unanimity of his election, and on his promise of fealty, and added, that he had sent Angilbert to administer the affairs of Rome,<sup>2</sup> and he further defines their respective duties.

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1. *Vita Leonis Papal*, R I Scrip Muratori T. III. 2, p. 282.

2. Carolus Magnus Leoni papæ scribit, maxime se gaudere quod unanimater electus sit, et sibi fidelitatem promiserit, mittere se Angilbertum, ut quaecumque ad agendum Dei ecclesiam necessaria videantur, cum eo constituat. Alcuini opera edit Duchesne. *Acta Caroli* edit Th. Sickel B. II s 58. Baluz T. I. p. 271. This Angilbert was doubtless the poet abbot of St. Richer in Picardy.

“My part,” he says, “is to guard the church, by force of arms, from external attack, and to secure her internally through the establishment of the Catholic faith; your part is to render the assistance of prayer.” Though Charles congratulated Leo on the unanimity of his election, he soon learnt that there were some who were strongly opposed to him, and had even offered him violence in the streets of Rome. Charles very soon after instituted an inquiry as to the conduct of those who had insulted the Pope, as also into certain charges which were made against Leo himself. That Charles should have subjected the Pope to a judicial trial is certainly important, as showing the authority which he claimed the right to exercise. Some of the bishops declared that Charles had overstepped his prerogative, that his action was *ultra vires*, but their remonstrances received little attention. I think you will see that the relations of the Pope to the Emperor partook largely of a feudal character. This indeed was the only form of tenure with which Charlemagne was most probably acquainted, and now that the Pope had received important territories from Charlemagne he promised him fealty, and this fealty was renewed by succeed-

ing Popes,<sup>1</sup> though it is certainly not likely that the usual feudal dues were exacted. The election of a Pope may have taken place independently, yet it undoubtedly required the imperial sanction before he could be permitted to assume authority over the territories which had been granted, and which came to be known as the Papal States. This election undoubtedly placed the Pope in a position subordinate to the Emperor, yet it gave the Pope the right of claiming protection which he had in common with other vassals, a right which the Emperors recognized. On the other hand the Emperor only received his crown from the hands of the Pope, and in so far the sanction of the Pope might be regarded as necessary before the Emperor entered upon his imperial office. It was scarcely to be expected that the interlacing of authorities, which was so complicated in its character, and where the interests were essen-

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1. On the election of Stephen the IV. he did fealty to Louis le Debonnaire. As this was the first election after the creation of the empire, and a long period had elapsed since the connection with the east had ceased, there seems to have been a little difficulty in understanding the new position and obligations of the Pope to the new Emperor of the west, and Stephen had been consecrated and crowned without the sanction of the emperor, who seems to have taken umbrage at this independent action. Stephen therefore despatched a legation, *quae super ordinatione ejus imperatori satisfaceret*, *Lib. Pontificalis II. p. 50, note 3.* On the election of Eugenius II. (824) some trouble arose and Lothaire issued an ordinance in which it was expressly declared that only Romans should take part in the election

tially divergent, could be permanent. One of the powers was certain, sooner or later, to become predominant, and curb or even crush the other. Charlemagne's great force of character could not but give its impress to the present relations, and so long as he lived he imparted to the whole government, papal and imperial, a unity which his contemporaries could not fail to acknowledge. Pope Paulus in one of his letters to Pippin called him the new Moses and the new David, at once the protector of the church and the guardian of the faith. The language of Stephen II to Charlemagne was not less deferential; he promised the fealty of Holy church, and the obedience of the pontiffs of the papal see. A French priest, Astulf, whose letters have been preserved, called Charlemagne the representative of God, while the bishop or Pope was only the representative of Christ. This distinction is certainly more political than theological,

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of the Pope, and that no Pope should be ordained before he received the sanction of the Emperor, and had taken the oath of fealty to him. Though he granted supreme judicial authority to the Pope yet the Emperor decreed that there should be the right of appeal to the Missi whom he should appoint. In fact the Emperor even in ecclesiastical affairs reserved the final judgment to himself or to his duly appointed representative. Vid. Abel und Simson B. II s. 248. for several examples. In Ravenna and the other towns which had been ceded to the papacy the Pope seems to have appointed the several officials, and to have exercised a large measure of authority, yet even here there was a final appeal to the Emperor or his Missi.

but it simply expressed his views of the relation of the state and church. In another place he assigns the rank or precedence as God, King, Bishop. As marked is the testimony of Alcuin, who enjoyed a reputation for ability and purity of character quite equal to that of any other doctor of the church. In one of his letters he congratulates the French people on being under the guidance of such a leader as Charlemagne, who like David used his sword to maintain the rights of the church, while he at the same time used his voice to uphold the purity of the faith. On another occasion he represents the Emperor as exercising a double authority, and wielding two swords. He separates between the spiritual and secular power (*divisa est potestas saecularis et potestas spiritualis*), and it is the duty, he says, of the Christian priest to attend to spiritual matters, but the Emperor's position is higher, and on him devolves the two-fold duty of ruling in secular government, but also exercising authority over the church and maintaining the purity of its faith, and this not in the Gallican church alone but over the whole church (*Regnum sanctae ecclesiae*). We cannot read the letters of the Popes to Charlemagne or the works of contemporary writers without being impressed by the fact that they used, in regard to the power and prerogatives of Charlemagne, language very similar to that used afterwards by the writers of

the twelfth and thirteenth centuries in regard to the powers and prerogatives of the Popes, as by Bernard of Clairvaux or Thomas Aquinas. Charlemagne was undoubtedly quite conscious of the dignity as well as the duties and obligations which his high position as Emperor entailed. Eginhard tells us that he was a close student of Augustine, and especially of the *De Civitate Dei*, and he could not fail to observe how strongly Augustine urged the necessity of maintaining the close union of the secular and spiritual powers. There is also the fact that he was frequently addressed by the Popes themselves as a new Moses or a new David, and was reminded by Alcuin, on whose judgment and sanctity he placed the utmost confidence, that those heroes of the Old Testament were at once warlike leaders and saintly teachers, and that his own position was a double one, combining the two-fold duty of defending the church from her enemies and maintaining the purity of the faith. It was in similar terms that Paulinus of Aquileia addressed him, "*sit dominus et pater, sit rex et sacerdos, sit omnium Christianorum moderatissimus gubernator.*" This was the great principle on which the Holy Roman Empire was founded according to the views of contemporaries. It was at once a mutual but intricate relation of church and state, but a relation which rested in a large degree on the high prerogative

of the Emperor who, in his own person, gave it unity and force. But this unity and force failed under the later Carolingians, only partially to recover its power under the Saxon Otho. The successors of Charlemagne, especially those who after the treaty of Verdun ruled in Italy, were not able to maintain the dignity and power which had given unity to the new Empire. Lothaire made a vain show of power by the publication of the *Capitulare Romanum* to which I have already alluded. His son and successor, Louis II, insisted on Pope Sergius II doing homage, before he would sanction his ordination. But Charlemagne had scarcely passed away before a strong movement to assert the superior prerogative of the church began to show itself. A series of letters by Agobard, Bishop of Lyons, written to Bernard of Vienne, and other contemporaries, maintained strongly the higher position of the priesthood over royalty, and especially of the Pope over the Emperor, and he sought to rouse the whole church to a sense of the dignity of her position. Wala, 'Abbot of Corbie, and others followed with their contributions in the same line of argument, and no doubt the movement was helped by the quarrels which arose between Louis le Debonnaire with his sons, and the subsequent quarrels of the brothers with one another, which resulted in the treaty of Verdun, and the splitting up of the

great kingdom of Charlemagne. In 858 Nicholas I. was elected Pope and was crowned, apparently without any reference to the imperial sanction. After Gregory the Great he was the first Pope who gave dignity to the papal see. He gained distinction for the part which he took in a contest between Photius and Ignatius in regard to the Patriarchate of Constantinople; a political rather than a religious contest in which Nicholas opposed the eastern Emperor, and even dared to excommunicate him. It was now too that Lothaire II. was obliged to submit to the Pope the question of a divorce from his queen, Teutberga. A synod of northern bishops had sanctioned the divorce, but Nicolas, acting on his own judgment, condemned the conduct of Lothaire, and refused to grant the divorce. Teutberga found a strong advocate in Hincmar of Rheims, who not only endorsed the action of Nicolas, but took the opportunity of pointing out that the authority of the Pope was superior to that of the Emperor, or even the provincial synod, and that, according to the terms of the council of Sardica, he was final judge of appeal. It was just at this time that there appeared the celebrated Pseudo-Isidorian decretals, and, though these were certainly forgeries, they were undoubtedly the expression of the present views of western Christendom, and of the pretensions of the growing power of the Papacy. In the weakness of the

imperial power the Lombards again began to encroach on the papal states, and the Pope was once more obliged to look north of the Alps for aid in warding off the attack. But the later Carolingians were utterly incapable of rendering assistance, and Pope John XII was obliged to appeal to the Saxon Otho, who overcame the Lombards. He was crowned Emperor by the Pope, and the crown of the Holy Roman Empire was transferred from the Carolingians to the Saxon line of German kings. This new relation into which the church entered with the Saxon Otho brought out more clearly the conditions on which the Holy Roman Empire was established. This new Germano-Roman kingdom combined two opposing powers on which the future development of Europe rested. Rome preserved the culture of the ancients, and with it gave Christianity to the modern world. The Roman church had drawn the German world to itself and, subduing the barbarians, brought them into a social system, and into a church policy which should continue to be for many centuries a permanent policy, and make the Eternal city once again to be the seat of a universal power, while it gave it a sanctity arising out of its own cosmopolitan character. On the other hand, Rome was the imperial city, not through its being the home of the great Catholic church, but because it was the capital of an Empire which acknowledged the

German monarch as its head, who claimed Rome as his imperial residence. But the combination of two powers in a politico-religious centre was not harmonious, and was certain sooner or later to lead to bitter struggles for supremacy, and ultimately to result in dissolution. The Papacy had too firmly secured its position to be again placed in subordination to the Empire. The successors of Otho though able men were not able to withstand papal aggression. Unity was absolutely necessary to the progress of the church, but during the interval from Charlemagne to Hildebrand there was continued strife between the temporal and spiritual powers. With the accession of Hildebrand to the papal throne the contest became more open and more violent, but it was to result once again in unity, in one great uniform hierarchical power, which should rise above all other sacerdotal powers, as well as over the Empire. In the succeeding three or four centuries the papal power was indeed endangered. There were two or three contestants for the Papal see, as when Philip Augustus supported the claims of Alexander III against Victor IV and Calixtus III, whom Frederic Barbarossa aided, as also for a time did our own Henry II; or again, when St. Louis championed against Frederic II the cause of Gregory IX, or still later when Boniface VIII had to seek the assistance of Phillip le Bel and

of Charles of Anjou against his own subjects in Rome, as well as against the Ghibelines and Henry VII of Germany, and Phillip, though rendering assistance, yet subjected Boniface to bitter humiliation. Then succeeded the captivity at Avignon, when the Papacy came entirely under the rule of the French crown.

## LECTURE XVI.<sup>1</sup>

### THE EVILS OF THE FEUDAL SYSTEM AND THE STRUGGLE OF THE TOWNS FOR ENFRANCHISEMENT. THE HANSEATIC AND THE RHENISH LEAGUES.

In previous lectures, I have sought to give you some idea of the state of France under the first and second or the Merovingian and the Carolingian dynasties. When Charlemagne partitioned his vast Empire among his sons, associating them with him in his sovereignty, it might have been quite evident to any impartial and thoughtful observer that such a state of things could not be long maintained. When at the beginning of last century half of Europe was governed by one—the Bonaparte family—and Amsterdam, Hamburg, Madrid, Rome and Naples were little else than capitals of depart-

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1. Books consulted :—Sickel, *Acta Carolinorum*, Abel & Simpson, *Jahrbücher des Frankischen Reichs unter Carl dem Grossen*. Simpson *Jahrbücher des Frankischen Reichs unter Ludwig d Fromme*. Phillipe de Beaunanoir, *Coutume de Beauvaisis*, edit Salmon. *Le Polytyque d'Irminon*, edit Guerard. Guizot *Hist. dela Civilization en France*, and *Assais sur L'Histoire de France*. Palgrave, *Hist. of Normandy and England*.

ments or provinces, no one could have imagined that this government was established on a permanent foundation. It rested on the power and supremacy of one man, and when he fell it was impossible to retain these provinces in the same alliance or in the exercise of the same sovereignty. In the one case as in the other, the Empire was broken up because it sought to retain under a forced subjection peoples essentially strangers to one another, who spoke different tongues, and some of whom surpassed in civilization their conquerors. The fame of a great commander or ruler always attracts a vast number of different, often discordant interests, and in the infatuation of military success a large army continues to adhere to the standards of a power, the influence of which points in a direction opposed to the interests of the great mass of the followers. But the moment of trial for great Empires arrives for the most part on the death of the founder, and the death of Charlemagne, or we may say the division of the Empire among his sons, which he evidently intended should guard against this danger, was nevertheless the signal for the dissolution of the Empire which he had founded. There were really nine states included in that Empire, and these, though thus united in their subjection, were separated by distinction of language, by national sympathies, by degrees and character of civili-

zation and by evidently marked natural territorial boundaries, France, Germany, Italy, Lorraine, the two Burgundies, Cisjurane and Transjurane, Brittany, Aquitaine and the Spanish Marches.<sup>1</sup> Though these distinctions were kept in view in the division of the Empire among the sons and grandsons of Charlemagne, it was yet folly to suppose that they could be kept united under the governance of the members of one family, and the real wonder is that the power of the Carolingian dynasty lasted so long as it did. But its influence and its territory diminished on each new succession. Germany, Italy, Lorraine, Burgundy, and Aquitaine were soon elevated into separate kingdoms or principalities, and elected to their respective sovereignties the person of their own choice. In the first instance, that of Germany, the remarkably strong attachment which existed to the Carolingian family led to the election of one more or less closely connected with that family. Before long, however, this principle was departed from, and Conrad, Duke of Franconia, was elected to the German throne, and after him Louis, the son of Arnulf; he, too, a descendant through the female line of the Carolingians. It is, perhaps, scarcely just to depreciate to the extent that many writers have done the weakness and in-

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1. Vid. Roth *Beneficialwesen* s. 58.

ability of the later Carolingians, and to attribute wholly to their effeteness the complete breaking up of the Empire of Charlemagne and the transference of the power to another dynasty. The truth is that it was quite impossible to maintain the unity of the Empire where there were so many discordant elements. No doubt the family quarrels did hasten its dissolution, and the feudal system of France arose out of the weakness of the later Carolingians. Never indeed was France in so feeble and so disunited a condition as on the accession of Hugh Capet, for besides the breaking up of the Carolingian Empire into the several kingdoms or duchies, which partly constitute the present kingdoms of modern Europe, the kingdom of France itself was broken up into great feudatories which were almost entirely independent of the royal authority. The feudal system, of which I have tried in the previous lectures to trace the origin, was in its full growth at the time of the accession of Hugh Capet, Count of Paris, to the French throne. At the close of the tenth century, there was no political unity such as existed under Charlemagne, no supreme head or authority which all acknowledged. But, as we have already pointed out, that unity was not a natural unity. The elements of which it was composed were very diversified and could only be made to adhere by force. It was a union of subjection, which sooner or later must

have become disintegrated into its several parts. It is, however, often the case that through disintegration we may reach a higher and truer unity, or at least arrive at the means by which a truer unity may be developed. And it is really just at this period in the history of France, when the several elements had become separated, that the development of a truer civilization begins; and if from one point of view we see the extensive Empire of Charlemagne broken up into several kingdoms, and even France itself divided into a number of separate feudatories, yet on the other hand we see a more natural unity, and a distinctive civilization beginning to develop itself. Hitherto we have found Roman, Gaulish and Gothic civilization, working in compulsory union; henceforward it is purely French civilization which we shall have to consider.<sup>1</sup> There is a unity which is external and ostensible, a unity of name and government, but this may not be the most important or the most real. The truer and the more profound unity results not from identity of government or even perhaps of destiny, but from the similarity of social elements, of institutions, of customs, of ideas, of sentiments and of language, the unity which resides in the people themselves whom society brings together, and not in the mere form of their

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1. Guizot's *Hist. de la Civilization*, 2nd series Lecture I.

union,—moral unity, which is far superior to political unity, and which can alone give this a solid foundation. Viewing the Empire under Charlemagne, we find that while there was a strong political unity there was an utter absence of that moral unity on which Empires can alone be built up and prosper. And if on the other hand at the accession of Hugh Capet there was wanting a political unity, and the Empire no longer presented the same entirety as under Charlemagne, yet we begin to catch glimpses of the great social elements of the nation, and we can henceforward mark the tendency to a greater national unity, and the progress of a distinct dominant element in French civilization; in fact it is the uniform character of French civilization, the strong moral unity of the French people, that has made the fortune of France.

The feudal period of France embraces the eleventh, twelfth and thirteenth centuries. Now the general character of feudalism is, I repeat, the dismemberment of people and of power into a multitude of petty principalities, and the absence of any great central government. It will be easily seen that innumerable evils and difficulties must arise from such a system. At the same time this period had much that was attractive. It was the cradle of modern society and manners, the heroic age of modern nations, the age too of chivalry and romance. Hence

dates the commencement of modern literature, and we may even say of modern languages. To this period we must date the beginnings of modern architecture. Then were built some of the most beautiful structures of modern Europe, churches, palaces and town halls; then too arose so many of the great families of Europe, who have played important parts in the several periods of European history; there too may be discovered many of the elements which subsequently developed themselves, and have influenced the progress of more modern history. It is a period full of interest to every student of history, yet it was the most insufferable and odious in the history of modern nations. Not even habit could reconcile the nations to the institutions and principles of feudalism, and it was their constant effort to free themselves from it. Kings, commons and the church became popular as one or the other dealt it a blow, and everything which seemed a means of deliverance from it was accepted as a benefit. There were two powers in Europe, particularly in France, which were especially opposed to feudalism; these were royalty on the one hand, and the commons on the other, and to these two powers feudalism at length yielded. By royalty a central government was formed; by the commons was created a united nation, which grouped itself around the central government. At the

end of the tenth century it may be said that there was neither royalty nor commons. Certainly they occupied no important place, but by the fourteenth century royalty had established itself as the head of the state, and the commons had become the body of the nation. It is worthy of notice that with the exception of the crusades, which were indeed essentially an adventure of feudalism, all the wars from the tenth to the fourteenth century were feudal wars, civil wars within the bosom of feudalism, wars in which a seigneur or the king endeavoured to possess himself of the land of another seigneur, or in which the vassals disputed among themselves for certain rights or certain portions of territory. After the fourteenth century, the wars may be said to have been foreign wars; such was the Hundred Years' War, which no doubt proved the insufficiency of the feudal power, while at the same time the power of the towns came to be more felt, and the king was led to seek their assistance. The rise of the towns not only in France but throughout Europe, and their struggles for independence is a most important fact in the history of the Middle Ages. The movement toward their independence was very general, corresponding in its main characteristics in the different countries of Europe; in the cities of North Germany, in those of the Rhine valley, as well as in Flanders, in the cities or the Repub-

lics of Italy, in those of Spain, and a little later in the towns of France; for the strength of the feudal system in France retarded for a time the struggle of the French Communes for independence. Undoubtedly the immediate causes which brought about the movement in the several countries of Europe were very different, but the thralldom under which one and all had so long laboured led all alike to seek some alleviation. I repeat, for I wish you to distinctly understand that the feudal system at the accession of Hugh Capet was firmly established in France, that the seigneurs had thrown off any dependence on the crown, and that they exercised full judicial powers in their several seigneuries without any reference to a higher jurisdiction, and exacted military service from their vassals. They also held their own councils, appointed their own officials, and even a bishop when the episcopal see fell within their domains, and they also issued their own coinage. The territory of the crown was simply that which Hugh Capet had held as Count of Paris, and he held this by his own independent right, on the same terms as the other great seigneurs held theirs; that is, it was not crown land, not royal domain, in the usual signification of that term, it was private property. Each accession to this territory would undoubtedly be held on the same terms. This would naturally beget a rivalry between the

crown and the other seigneurs, and as each accession of territory added to the power of the crown it also contributed to the growth of absolutism, since there was no representative assembly, no means of giving expression to the voice of the people, and no means of controlling the royal power. The States General of the fourteenth and fifteenth centuries had no legislative and no executive power, and consequently exercised no controlling influence over the crown. To trace the growth of the monarchy in France till it reached complete absolutism is the purpose which we must keep before us in the following lectures.

As in English history the main purpose of the historian is to trace the development of constitutional government, so in regard to France it shall be our purpose to trace the growth of royal authority in its struggles with feudalism till it succeeded in depriving it of all power, in its victory over the Communes, in its acquiring entire control of judicature, in its subjection of the Gallican church to its authority, and in the extension of its territorial possessions. The character of royalty in France is so essentially different from the character of royalty in Great Britain that it may be difficult at first to understand it. It is quite true that the constitution of England presents a bundle of anomalies which, however, have always rested on the same principles, and

in which there has been very little jarring, very little confusion, because the interests of all classes have under all circumstances been duly considered. In France, on the other hand, there has been a constant conflict of class interests. Even in Anglo-Saxon times the king was sovereign over the whole of his kingdom, and the main roads leading to all parts were the king's highways, yet the possessions of the crown were of limited extent, and the king had no power of granting land without the sanction of the Witenagemote. It was folk land till it became patented land or boc land, and only after the Norman Conquest did it become terra regis, still remaining however under certain restrictions.

In France the king was at once the source of all law, and yet above all law, and at no time was there a regular legislature in France, for the States General never had legislative powers, and the Parliament of Paris was simply a supreme court of justice with the power of registering the royal decrees. In England the laws were issued in the king's name, but the Witenagemote had always a legislative power. In one sense the king was the source of law, yet he was himself amendable to law. Under the early Anglo-Saxon constitution there is more than one case where a king was deposed for the infraction of the laws. Later Edward II. was

tried and deposed by a Parliament at Westminster, and still later Charles I. was tried by Parliament and was condemned to the block.

The charter of Henry I. confirmed by subsequent kings, the Magna Charta, the Provisions of Oxford, the Ordinances of Edward II's reign, the Petition of Rights, and the Bill of Rights were each strong restrictions against the exercise of arbitrary power by the crown. The gradual growth of the control of the House of Commons over taxation, the declaration of the right of discussion in Parliament, the substitution of Bills for Statutes, the assertion of the rights and privileges of members, and finally the development of Cabinet government, with the responsibility of ministers are so many proofs of the legitimate influence which the House of Commons, the expression of the popular will, exercises over the administration of government in Britain. A similar development in France was impossible; there the growth to absolutism was constant if gradual, and the steps in the progress were quite clearly marked. The incidents of the history may be occasionally obscure, but the direction of the development is always quite evident. From its earliest establishment the government in France was personal, and its whole development was of the same personal character. None of those in authority ever seemed to have recognized that a nation is a corporate body in

which the members have mutual interests, and whose relations are so closely associated that any injury or injustice suffered by one is certain to affect the others, and is equally sure, sooner or later, to bring its retribution. It shall be our purpose then to show how royalty in France, from its feebleness under Hugh Capet, gradually acquired power over the baronage, over the Commons, or Tiers Etat, and over the Gallican church, till it became the most absolute power in Europe. In carrying out this purpose I shall consider the subject under the following heads:<sup>1</sup>

1. The struggles of the Communes for enfranchisement and their subsequent subjection to royal authority.

2. The Ante-Feudal influences of the Crusades.

3. The acquisition of territory by the crown.

4. The exercise of judicial power.

5. The struggles of the States' General for constitutional powers.

6. The control of the crown over the Gallican church.

7. The power of the purse, or the revenues of the crown and their expenditure.

In treating of these several divisions of the

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1. I have here adopted the very admirable method of Sir James Stephens in his Lectures on the History of France.

subject I shall not confine myself to the history of France, but where the movement was a general one shall endeavour to trace it in the other countries of Europe also. For instance, the struggles of the Communes for enfranchisement were, though attributable to very different causes, common to the Hanse towns, to the towns of the Rhenish league, to the Communes of Flanders, to the free towns of England, and of Spain, and to the Republics of Italy as well as to the Communes of France. The Crusades too were a movement which affected the whole of Europe, and though their effect was principally discernible in France they had also an influence on other countries.

The power of the purse in France will be perhaps best understood by contrasting it with the financial arrangements existing under the British constitution.

We shall then in the first place study the growth of freedom as exemplified in the struggles of the towns of Europe for enfranchisement.

The towns of Spain seem to have enjoyed a measure of freedom earlier perhaps than those of any other country of Europe. The invasion of the Moors compelled the kings of Spain to enlist the interests of each member of the state in a strong resistance, and they were obliged to

grant to the towns their enfranchisement, and even to give them a deliberate voice in the Cortez or Parliament.

## LECTURE XVII.<sup>1</sup>

### THE HANSEATIC AND RHENISH LEAGUES AND ENGLISH BOROUGHES.

At a very early period trade and commerce began to develop on the Baltic and North Seas. Amber, which alone was found along the shores of those seas, was early known to the nations of the ancient world, and the Phenicians carried on quite a lucrative trade in that precious product of the sea. It may be difficult to determine whether ships freighted with amber passed along the western coast of Gaul and through the Straits of Gibraltar into the Mediterranean, or sailed up the Rhine and transferred their freight to the Rhone, by which stream they reached Marseilles. In the time of Drusus the inhabit-

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1. Books consulted :—Phillipson, *Geschichte Heinrich's des Lowen*, for the early history of Lubeck, and of the northern Slavs, and their conversion to christianity. Motley, *The Rise of the Dutch Republic*, Introduction. Heyd *Histoire du Commerce du Levant au Moyen Age*, tr. par Furcy Raynaud. Carlyle's *Early Kings of Norway & Sweden*. Barthold, *Die Deutsche Hansa*. Hegel *Städte und Gilden der Germanischen Völker im Mittelalter*. Warn-Koenig, *Histoire de la Flandre*, tr. par, A. E. Gheldolf. Lettenhove, *Histoire de la Flandre*. Weizsäcker *Der Rheinische Bund*. Helen Zimmern, *The Hanse Towns, Story of the Nation series*.

ants of the coasts of the North seas were not merely skilled sailors, but possessed ideas of commerce. They were earlier disposed to enter into commercial dealings with the Romans than any other Teutonic people, and some of the Roman colonies in the north of Gaul and along the Rhine opened up trade with them. The modern Cologne owes its origin to a Roman colony, which if not established by Agrippina, at least long bore her name, and became a centre of trade and manufacture. But we think Barthold is scarcely justified in regarding it as the cradle of the Hanseatic league. There is no authentic information regarding the beginning of this league. No sooner had trade and commerce begun to develop than the Northern seas became infested by pirates, who watched every coast, and for some distance up the rivers which empty into those seas. Besides the trade with the East, which was carried on by the towns of Italy, or which ascended the Danube, and thus found its way into Central Europe, there was another route by the Caspian and Black Seas, the Volga, the Don or the Dneiper, and then by the Dwina, the Vistula, or the Oder to the Baltic. By this line of traffic, the treasures of the east found their way to the north. Novgorod on the Volga became a great entrepot for that trade, which consisted principally of spices, pearls, silks, furs and linen fabrics. These were

conveyed by the Baltic and the North Seas to Flanders, to Gaul or to England. But these rich wares formed too strong a temptation to the pirates of the north, whose occupation was regarded as perfectly legitimate, and they enriched themselves with the large and valuable booty which often fell into their hands. But the very extensive herring fisheries off the shores of Sweden and Norway were also a great source of wealth to the cities along the coast. At that time all Europe was Romanist, and the large number of fast days led to an enormous consumption of fish. But these fisheries were not free from the invasion of the pirates. In order to protect the trade as well as these fisheries, it became necessary for the towns to combine together, and in this way the Hanseatic league was formed. But this movement on the part of the towns of the North Seas had been preceded by a similar movement among the towns along the Rhine. Anyone who has sailed on that lovely river will well remember the very frequent castles built on the lofty rocks overhanging the stream. Throughout the whole of the Middle Ages, these castles were held by knights who watched the stream below, ready to waylay any passing boat and to levy a heavy toll. The Rhine was a great highway for the commerce of Italy and the Mediterranean with the north, and the Rhine boats were often loaded with rich merchandise.

The commerce of the east too often ascended the Danube and was conveyed from that river to the Rhine by way of Ratisbon and Nuremberg and Ulm, and this portion of the land journey was not less endangered than the passage by the river. It debauched on the Rhine at Strasburg, so that from this point the traffic on the river was not only very considerable, but very rich and offered a strong temptation to the knights. The towns along this river as well as along the land route combined to protect the traffic, and the Rhenish league seems to have preceded the league formed by the Hanse towns. It can easily be imagined that the kings and princes of the time did not view with a friendly eye the independence of the towns secured through the leagues which were formed. Fortunately for them the attention of the German Emperors in the twelfth and thirteenth centuries was too much occupied by the affairs of Italy to allow them to attend much to what was taking place in the north, though many of them, and especially those of the Hohenstauffen line, made repeated attempts to reduce the towns to subjection, but always without success. The kings of Denmark and Sweden, on whose coasts the principal fisheries were, on several occasions declared war against the Hanse. From 1157 to 1182, under Waldemar the Great, Denmark acquired an important position and strengthened her power

very much, and frequently opposed the Hanse fleets. But in 1227 the Hanse towns defeated the Danes in the great battle of Bornhoved, and weakened the North German allies who had assisted the Danes, and when in 1247 Eric II. ventured to attack some of the ships of Lubeck, the merchant townsmen overcame the Danish fleet, and even seized and sacked Copenhagen, and planted their flag in Zealand. In 1326 Waldemar III. ascended the throne when Denmark had reached its greatest power. Though a mere boy of twelve years, Waldemar very early developed great mental and physical vigour. He soon interfered with the fishing privileges of the Hanse towns on the coast. The Hanse had taken possession of Gothland, and had established a northern emporium in the town of Wisby. Waldemar invaded Gothland, and sacked Wisby. This was the beginning of a long and bitter strife. The Hanse towns at once got ready a fleet, and formed an alliance with the kings of Sweden and Norway, who though generally in alliance with Denmark were at that time at feud with Waldemar. In May, 1362, the Hanse fleet again plundered Copenhagen, and carried its most esteemed treasures to Lubeck. But here the success of the towns was stayed; the northern kings did not send the promised aid. The Burgomaster of Lubeck, Johan Wittenborg, who was admiral of the fleet,

had been obliged to land most of his sailors for a second attack, and Waldemar, taking the opportunity, very unexpectedly surprised the Hanse vessels, carried off twelve of the best and dismantled others. With a small remnant Wittenborg was obliged to return to Lubeck. He found the city embittered against him for his want of success, and he had to expiate his rashness by his death, so sternly did the Hanse punish. Waldemar was now determined to crush entirely the power of the Hanse. He formed an alliance with the kings of Sweden and Norway. The towns, on the other hand, felt that now or never they must secure their independence. In 1367 deputies from the Baltic and inland towns met in conclave in the great council chamber of the town hall of Cologne; a meeting that became the foundation act of the recognized and open constitution of the Hanseatic league. Here for the first time was drawn up an act which, though renewed, modified and altered in course of time, yet remained the fundamental basis of the league. There is no other document of the Hanse than this of the Congress, known as the Cologne confederation,<sup>1</sup> by which the towns pledged themselves to unite against the common enemy. The weaker towns were to assist by subsidies, and any town

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1. There are the *Recessen*, but these are year books of the Hanse.

which would not join in the war was held as outside the league. This confederation was too strong for Waldemar, and he was glad to sue for peace. This celebrated peace of Stralsand established the supremacy of the Hanse over Scandinavia, and in the words of Gustavus Vasa, placed three good crowns at the mercy of the Hanse. German Emperors now treated the Hanseatic league as equal in importance with the Empire itself, and when they visited the towns, the burgomasters received them as equals. From this time the influence of the Hanse greatly increased; they threw out their branches in all directions. They had their markets in the towns of Flanders, and Antwerp, Bruges, and Ghent, owed their importance and their independence to them. They had entrepots along the French coast, in Spain, and especially in Portugal, while they also had trade relations with the Republics of Italy, and had a depot in Venice which continued to be the centre of a refined, easy and pleasant intercourse between North Germany and Italy till the Reformation. The Hanse also penetrated into Russia, and Novgorod again became the centre of a lucrative trade, through which the wares of the east and of southern lands once more found their way into the interior of Russia, as well as throughout the north of Europe. Perhaps, however, their most important depot was in the city

of London. Early English kings protected these rich foreigners, and these in their turn helped them out of many a pecuniary difficulty. The kings, however, accorded them such privileges and monopolies as could not fail to rouse the jealousy of their own people. The merchants of Cologne before the regular confederation of the Hanseatic league was definitely formed, were the first to obtain special favour, and not even in Flanders did they enjoy greater privileges. The Hanse became a state within a state; while benefitting by English law, they were yet quite independent of it, and it is almost incredible how great was the ascendancy which a company of merchant towns, isolated and distant from one another, gained over a powerful government and a proud and valiant nation. The English government was unable or unwilling to stop the piracy along the English coast, and the vessels of the Hanse suffered very considerably. They in turn took to piracy, and there were mutual reprisals. The Lubeckers were particularly revengeful. The English now took possession of the Hanse depots in London, and seized and put to death all found there. The league, thereupon, broke up commercial relations with the English, closed all the Baltic ports against them, and seized their vessels on all seas and coasts. They even landed in England, and ravaged many of the maritime counties. This war proved so

ruinous to the English that, after seeking the mediation of Charles the Bold, Duke of Burgundy, they were obliged to sue for peace. A congress met at Utrecht, in which peace was again established, and now on a more permanent basis. By this treaty the Hanse were confirmed in all their privileges and monopolies. They had a part of the city and of the port assigned to them, and the whole place was surrounded by a strong wall. Within this was their Guild Hall, where they conducted their business. This great hall was used as a dining hall, as well as for holding the meetings of the merchants. The foreign members at any of the outer depots were not allowed to marry; in fact the gild, for such it really was, assumed the form of a semi-religious company. It was, however, rather a strange system, for while piracy and even murder on the high seas were not regarded as improper, yet in their own towns, and in their foreign depots the strictest morality was enjoined; all playing at dice and the use of opprobrious language was strictly forbidden under a heavy penalty. In England they enjoyed the protection afforded them by the English laws, but among themselves they were perfectly independent, and administered their own laws. The part of the city assigned them was even then one of the most important, still known as the Steelyard, so called from the steelyard used in weighing the wool

and other goods exported or imported. Through this port almost all the staple articles of trade entered, and were dispersed throughout the kingdom. London, however, was not the only depot; there were others at Hull, Bristol, Norwich, Ipswich, Yarmouth, Boston and Lynn Regis. The Hanse continued to control the English trade even during the reigns of Henry VII. and VIII. But in Edward VI's reign, complaints were made against the privileges and monopolies granted to these foreigners, which it was maintained were destructive of home industry. The result was that, notwithstanding the remonstrances of the Hanseatic Diet, the privileges so long enjoyed by the Steelyard were very much restricted. On the accession of Mary, the Hanse sent their early congratulations, and the restrictions made by Edward VI. were removed. Very soon, however, the English merchants once more drew up a long list of grievances against the privileges of the Hanse, and the privy council again placed them under strict regulations. Phillip II. sought through Mary his wife, to induce the rescinding of these measures, but was unsuccessful, and when Elizabeth came to the throne the power of the Hanse in England was completely broken. Hamburg and Lubeck now adopted the system of retaliation, hoping to bring England to a renewal of the old charters, but without success. But while the Hanse in

England was deprived of its privileges, on the continent the thirty years' war gave the league its death blow. Gustavus Adolphus sought its aid in the Protestant cause against Austria, but it refused. The overtures of the kingdom of Denmark were also rejected, as were similar offers from France. Spain also courted an alliance with it in order to obtain the assistance of its fleet against the Netherlands. It was determined, however, to remain neutral in the contest which was then beginning. But its neutrality was not respected by the Austrian generals. Tilly besieged several of the towns; Wismar had to pay two hundred thousand dollars, Hamburg a larger sum, and Rostock two hundred and fifty thousand, in order to escape military occupation, while Magdeburg was given to the flames, and a large number of the inhabitants put to the sword. When at length the war was brought to a close by the peace of Westphalia, the Hanseatic league had come to an end. The Diets which had been called during the war were attended by delegates from only two or three towns. It was not till some twenty years after the peace of Westphalia that a strong effort was again made to revive the league. The first attempt utterly failed, but the next year still further efforts were made, and Leibnitz, the eminent philosopher, was one of the most earnest in seeking its renewal, and per-

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sonally used all his influence with Charles VI. to countenance the effort. But all the efforts were unsuccessful. Some of the cities, as Lubeck, Bremen, and Hamburg continued to enjoy their freedom till a few years ago. After the French Revolution, by an agreement between France and Russia, the neutrality of the Hanse towns was recognized. Napoleon when he possessed himself of North Germany, thought that he might dispose of these towns as he wished. He offered to give them over to Hanover in order to procure peace with England. Being unsuccessful in this purpose he offered them to Sicily. When in 1813 Prussia made her great effort to break the Napoleonic yoke, the three Hanse towns that we have just mentioned braced on their armour, and entered on the struggle with the utmost enthusiasm. After the congress of Vienna, the towns were allowed to retain their freedom. Some twenty-five years later Lubeck was incorporated in the German Zollverein, and in October, 1888, Hamburg and Bremen, through Bismarck's persuasion, which amounted to virtual compulsion, followed the example of Lubeck. Thus closed an important page of history. The influence of the Hanse towns had been very great. They had given an impulse to commerce and manufactures, and had encouraged the struggle for freedom throughout Europe.

The earlier movement in England had perhaps no connection with that of the Hanse, but it was certainly encouraged by it. It will be readily understood from what we know of the English constitution that the boroughs had never been subjected to the same degree of control as the towns on the continent. At an early period they had their Borough moots in which a measure of justice was exercised, and they elected their own magistrates. Even in Anglo-Saxon times there were fitful efforts to open trade with the continent. Canute encouraged trade between England and his continental kingdom, and before the Norman conquest Chester had opened up trade with Ireland, principally with the Danes who had settled there; and in the Customs of Chester in Domesday Book there are laid down stipulations for the regulating of this commerce. But as trade developed wealth increased and the towns grew in importance. The Customs of the towns, as presented in Domesday, were of a very complex character, for several barons often held lands within the same borough. In Lincoln, for instance, there were twelve barons (Lagamen), having judicial rights, and the dues were paid to the respective barons. These barons, however, held manorial land outside the borough, and removed some distance from it, and the dues from the boroughs were in such cases collected in the

outside Manor.<sup>1</sup> Very many of the boroughs were also the seats of the Hundred and even the County Courts, and justice was administered in these courts, though this did not necessarily exclude the action of the Manorial Courts held by the barons.<sup>1</sup> We must bear in mind that the boroughs were dependent on the surrounding country, the inhabitants being engaged in tillage. There were very few if any shops, but there were fairs held at stated times during the year where the inhabitants laid in their supplies. Division of labour was not common, for each family had its loom and its wool of which the garments were manufactured, while home-tanned leather furnished the shoes, and it is doubtful if ever a coin was exchanged for the necessities of life. The dues payable to the barons or to the borough were paid in service, or in kind—the product of the fields. With the advance of trade and the freer circulation of money the respective dues were paid in coin. This led to an important change, and the land and houses which before had been held under the obligation of dues, in the form of labour rendered, or in the return of produce gathered, were henceforward often held on a rental payable in coin. The tenant—the villanus—was no longer subject to

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1. Madox Firma Burgi quotes a number of instances which show what Maitland calls the heterogeneity of the earlier borough tenure.

menial labour on the lands of the baron, or to the exacting of a portion of the product of the virgate assigned him. This money rental constituted burgage tenure, and it rendered the tenant much more independent. In fact, it was of the very essence of enfranchisement. The Villanus who paid rent for his land was released from other obligations, and this tenure became the general form of tenure. There was a tendency for land held on burgage tenure to become permanent and hereditary, and this proved advantageous to both the baron and the villanus. The baron was very generally an absentee; even before the conquest his manorial lands were very much scattered, and this was especially so after the Conquest. In Domesday there is no trace of this burgage tenure, as there is no trace of independent corporate borough institutions, though there was an evident tendency to both. In Domesday, however, we catch glimpses of Gilds, as yet mere voluntary associations without a legal corporate existence. With the growth of industry and the development of commerce, and the independence supplied by burgage tenure, there would be a natural tendency to individual possession of land and to corporate borough community. The agrarian character of the old Burgher life gave way, craftsmen and merchants were gradually attracted, regular markets became established, and market tolls were exacted

—part of which went to the baron, if the borough were within a barony, but the greater proportion was paid into the royal treasury. The dues were collected by the sheriff of the county, and were not only very burdensome, but often cruelly exacted by the sheriff or his bailiff. They were exacted individually before the borough had a corporate existence. These several circumstances would give a great impulse to the desire to acquire this independent corporate existence, and the boroughs sought a charter granting them corporate power. In connection with this they acquired the right of holding borough courts, and in time they aspired to farm their own taxes, and to administer justice in their own courts.<sup>1</sup> The rights of the king in these corporate boroughs were chiefly pecuniary, and it was often difficult to collect the numerous small sums. He might therefore be quite willing to arrange with the borough for a fixed sum payable each year, or, in other words, to lease or farm his rights, and this step seems to have been taken even before the Conquest. The sums to which the king

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1. The Manorial courts and the courts of the Borough sometimes came into collision, and it was difficult to determine the spheres of their respective jurisdiction, but with the decline of feudalism in England and the growth of the boroughs, the Manorial courts gradually gave way to the borough courts, especially in cases where the borough courts became blended with the Hundred, or sometimes even with the County court.

had a right from the boroughs were such as—first, the market dues, and the fines from the borough courts; secondly, the Gafol or rent derived from the tenements belonging to the king, and occupied by the Burghers; third, the Dane-geld, which, however, was only an occasional tax. It was the market tolls and the fees and fines from the court which were farmed. This *Firma Burgi* did not, however, necessarily imply that the borough was a corporate borough.

In the earlier instances the ferm or commutation seems to have been arranged individually or conjointly, and still with or through the sheriff. Sometimes the tenants of the borough connected themselves with the Shire and County, and were allowed to pay through the ferm of the Shire. This is mentioned by Madox,<sup>1</sup> as exemplified in the case of the towns of Southampton, Stratton, and Heyworth in Wiltshire, and in a report made at a later period before Edward II. it is expressly said that the men and tenants of a certain borough had hitherto contributed, with the men of the community of the said county, to the common prestations and charges made upon the same county. Sometimes the ferm was made with the Gild, which earlier was distinct from the corporate community of the borough, though after-

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(1). *Firma Burgi* p. 5.

ward they were undoubtedly combined. It was not till a later period that the borough as a corporate borough farmed its own taxes. The charters which granted full incorporation to the borough were very diversified, scarcely any two of them being alike. A large number of the later charters were granted to the Gild, or rather to the merchant Gild, which enjoyed the greatest influence. The leading members of the Gild were the leading members of the city, and the charters which were granted were charters of liberties, and while they ceded large immunities and privileges, they made the Gild responsible for the preservation of peace, for the maintenance of law and justice, as well as for the performance of obligations, and the payment of dues. In the case of several of these charters it was evidently a restoration of enfranchisement. The charters to the larger and the more important towns belonged principally, however, to the reigns of Henry I. and II. and of the three Edwards. They were thus nearly contemporary with the great movement on the continent. But a striking fact is that the movement in England was very gradual. Like all else in English constitutional history there was nothing spasmodic, there was a development from one stage to another, a development of which we can trace each step. But the enfranchisement of English towns was permanent. No attempt was ever

made to encroach on their liberties, which cannot be said of the French Communes, the German towns, or the Italian Republics. Since the parliament of Simon De Montfort in 1265 the boroughs have made their power to be more and more felt till the House of Commons is to-day the great governing power in the Empire of Great Britain.

## LECTURE XVIII.<sup>1</sup>

### THE DEVELOPMENT OF THE ITALIAN REPUBLICS.

In my last lecture I traced the struggle for freedom among the towns of North Germany, and among the towns of the Rhine district, represented by the Rhenish League, as well as those of Flanders, of England, and of Spain. I shall now present a brief view of the condition of the towns in Italy, especially of those of North Italy, and of their efforts to gain and maintain their municipal enfranchisement.

The condition of the Italian towns differed es-

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1. Books consulted :—*Geschichte des Römischen Rechts im Mittelalter* von Friederich Carl von Savigny. *Geschichte der Stätdeverfassung von Italien* von Carl Hegel. *Ursprung der Lombardischen Städtefreiheit* von N. v Bethman-Hollweg. *Geschichte der Italienischen Staaten* von Dr. Heinrich Leo. *Liber Pontificalis* edit L'Abbé Duchesne. *Berum Italicarum Scriptores* da Ludovicus A. Muratorius T. III pt. 2. *Dissertazione sopra le Antichi Italine e annali* da Murartori. *Historia Principum Lombardorum* de Camillus Peregrinus edit FR. Pratillus. *Storie dei municipi Italiani* da Carlo Morbio. *Vicende della Proprieta in Italia* da Carlo Baude di Vesme e di Spirito Fossati. *Deutsche Verfassungsgeshichte* von Georg Waitz B. V-VI. *Geschichte der Stadt Rom.* von F Gregorovius B. I-III. *Epistolae Gregorii Papae* edit Paulus Ewald und Ludovicus M. Hartman. *Historia d'Italia* di Carlo Troya. *Zur Entstehungsgeschichte des*

entially from that of the towns in Gaul, or in Germany. In those northern countries there had been a division of land which was not an equal division, but which depended on the rank or position of the individual to whom it was granted, and this division of landed property tended further to confirm the inequality of ranks. In those northern settlements landed property was of sole importance as the only source of wealth. There had been little or no accumulation of capital, and no manufactures of any importance, for, at least in Gaul, they had not survived the shock of the conquest by the Franks. It was sometime before industries, other than agrarian, were developed, and indeed the towns in Gaul with very few exceptions lost their independence, and came under feudal rule. The condition of

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Consulat von Adolph Pawinski. ·Histoire des Communes Lombardes par Prosper de Haulleville. Literargeschichte des Lombardischen Lehenrechts von Carl F. Dieck. Die Germanischen Ansiedelungen und Land Theilungen von TH. Gaup. Die Langobarden und ihr Volksrechts von Carl Turk. Edictus Langobardorum edit FR. Bluhme. Edicta Regum Langobardorum edit Baude, de Vesmae cur J. F. Neigehauer. Das Langobardischen Lehnrecht von Carl Lehman. Histoire Civile du Royaume de Naples Tr d' Italien de Piere Gianone. T.I. Das Herzogthum Benevent, von Fer Hirsch. Die Geschichte des Langobardenrechts von Johannes Merkel. Codice Diplomatico Toscano compilato da Fillippo Brunette. Geschichte Italiens im Mittelalter B. II. von Moritz Hartman. Les Institutions Communales de Rome sous la Papaute par E. Rodocanachi. Storia Diplomatica della Lega Lombarda di Cesare Vignati.

the Italian towns was somewhat different. When the several Gothic tribes invaded Italy it was an old established country, and amid the vicissitudes through which it passed, the towns retained something of their wealth, and of their independent municipal constitutions. The invasion of the Lombards has been pictured in darker colours than that of the Visigoths or Ostrogoths, but I am inclined to think without sufficient reason. The Lombards, after their settlement in Italy, certainly preserved their independent Teutonic character in a more marked degree than the other German races, who very soon adopted the Roman manners and customs, and identified themselves with Roman society. With the exception of their short union with the Saxons the Lombards remained purely homogeneous. For a long time they seem to have preserved their Sagas—their historic songs—which as they recorded the deeds of gallant ancestors fostered an independent spirit, and tended to prolong their separation from the Romans. With the exception of Rome and a part of the Campagna they reduced Italy to subjection, and it is probable that they deprived the larger proprietors of their land though they do not seem to have changed the position of the middle and lower classes, while they preserved serfdom and the colonat.<sup>1</sup> I can find no ground for the as-

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1. Paulus Diaconus II. 12.

sertion that they destroyed the Italian towns. Milan long maintained a bitter struggle against the invaders and suffered accordingly, but the other towns seem to have been allowed a degree of independence. Our sources of information are unfortunately very meagre. Our principle authority, Paulus Diaconus, wrote some two hundred years after the earlier events which he records, and his information therefore is largely second hand. Besides he was a monk and occasionally could not forget that the Lombards were Arians. He borrowed from the *Vitae Pontificorum* as now preserved in the *Liber Pontificalis*, or as collected by Muratori from Agnellus, Fortunatus, Eugippus, and later from Secundus, Bishop of Trent. He also made free use of the letters of Pope Gregory I. These letters do certainly present a very gruesome picture of rapine and murder perpetrated by the Lombards, and of the destruction of many of the cities. Yet several of these letters were written to bishops whose episcopal sees were in some one or other of these towns, and who were evidently allowed to remain undisturbed in their dioceses, and Paulus himself makes mention of the fact that Alboin confirmed Felix, Bishop of Treviso, in full possession of the goods and privileges of his church. We further find, that after the death of Clepho, who succeeded Alboin, the kingdom was divided among thirty-five or

thirty-six Counts, who exercised independent power, and the towns which became the seats of their courts were in each instance the old provincial towns of their respective districts. It is, however, very difficult to determine the amount, or the character of independence retained by these towns from the sixth to the eleventh century. Ravenna continued for some time to retain its constitution as a full Roman municipium, though so long as it remained under the rule of the Eastern Emperors, the Exarch seems to have exercised military authority. Rome, constantly threatened by the Lombards, was subjected to military rule. Charlemagne, however, effected a change in its municipal government, which apparently was a combination of the old Roman municipal constitution with the form existing in France, where so many of the towns were coming under feudal rule. While then Rome was allowed to retain the form of municipal government, she was, in judicial matters, subject to *Judices Palatini*, seven in number, who as imperial and papal officers, under a president or *Primicerius*, administered justice. A little later other officers were added, called *Dativi*, whom Gregorovius thinks conformed to the Frankish *Scabini*.<sup>1</sup> All these officers were either imperial or papal servants.

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1. Gregorovius *Ges. d. St. Rom* B. IV. s. 428 433.

Consuls as municipal magistrates are, however, mentioned more than once in documents of the eighth century, and in 928. Besides the consuls there is allusion made to twelve tribunes as representing the Senate.<sup>1</sup> From the tenth century consuls are repeatedly named. Whether the Senate was fully established at that period is rather uncertain. Otto of Freisingen states that the order of the Senators was renewed in the twelfth century.<sup>2</sup> He attributes the movement to the people, but Baronius gives the credit to Pope Innocent II.<sup>3</sup>

The Roman aristocracy with their clients had begun to assume somewhat of their old importance. Many of the members of this aristocracy may have traced their descent from the old patrician families, but perhaps the larger number of those who took part in the present action towards the establishment of the Senate were new men, Lombards, Franks, and Saxons, who had settled in Roman lands, had acquired wealth and power, and were no longer disposed to submit to papal rule. The middle class of citizens had also been gaining influence, and now took part with the aristocracy in the struggle to assert their independence, and to re-establish the old municipal government. This indeed was the beginning of

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1. Muratori dis. XLVII note.

2. Otto von Freisingen Chron. B. VII. ch. 27.

3. Baronius Annales Ecclesiastici sub. anno. 1130.

a contest in which the citizens were much divided, and which lasted for some two centuries, and resulted in the humiliation of Boniface VIII. and in the removal of the seat of the papacy to Avignon.<sup>1</sup>

The towns of South Italy do not appear to have come so fully under either Gothic or Lombard rule. Zotto at the command of the king Autharis, had taken possession of Beneventum, and had established it as a Lombard duchy. The whole of South Italy had long been held by several dukes, as of Naples, of Amalfi, of Tarentum and Gaeta, who, however, were dependent on the Exarchs of Ravenna, as representing the Eastern Emperor. In the feebleness of the Exarch's rule these dukes had become virtually independent. About the same time Beneventum had grown to be a place of some importance, and while other towns had languished under the Gothic invasions, it had become wealthy and powerful, and now under the Lombards it was the capital of the united provinces of Samnium, of Luceria, Bruttium and part of the Campagna. Before long the dukes of Beneventum extended their territory to include the dis-

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1. The Colonna and Cola di Rienza took important part in the final struggle. The Colonna were of good family but Cola di Rienza, called the last of the tribunes, was of low origin. Bulwer Lytton in his novel "Rienzi or the last of the Tribunes" gives a graphic and generally a very good account of the struggle.

tricts of Salerno and Capua with the command of several of the ports. There is every reason to believe that the towns of that southern district retained a measure of their old municipal rule. Capua, after the siege by Genseric, is represented as having its decurions, who assembled to consider the state of the city.<sup>1</sup> Under the Lombard Duke Gisulfus about 750 there is frequent mention of the Curia of Capua, and in 1117 there is further allusion to meetings of the Curia, and even of the business done there, conforming to the business of the old Curia.<sup>2</sup> There is no reason to suppose that the case of Capua was singular. Certainly a little later the towns of Beneventum, Amalfi, and Salerno became independent republics. They acquired great wealth and, through the Crusades, developed extensive trade.

In regard to North Italy the towns would seem to have been reduced to more entire subjection to Lombard or Frankish rule. Yet I am satisfied that they were not destroyed, or lost their independence to the extent that Leo or Troya or Hegel suppose. In the tenth and eleventh centuries the old Roman municipal sys-

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1. *Primores scilicet, et Decuriones varie dispersi statis diebus conveniebant, ut annonae urbis, ceterisque civium commodis consulerent.* Chron. Anon. Salernitani di Fr. Pratillus. *Hist. Prin. Lang* tom II P. 328.

2. *Hist. Prin. Lang* tom II. 286 note.

tem seems to have been very generally restored. Balbo places this revival somewhere in the eighties of the eleventh century, but Morbio mentions with more precision that Orvieto chose consuls in 975, Pisa in 1017, Milan in 1100, and Florence in 1101. The towns of Lombardy and Tuscany, as well as those of the south, seem then to have thrown off all foreign rule, as well as the rule of the feudal counts, and it was evidently this general movement that affected Rome also. There is no doubt that feudalism had been established in both the north and the south of Italy.<sup>1</sup> The counts, who were numerous, had been granted land by both the Lombard and Frankish kings, but they did not attain such great power as the seigneurs did in France. We may gather from a study of the *Liber Feudorum* that the Italian feudal lords were held in constant check by the Lombard kings, and the Carolingian and German emperors. The collection which forms this *Liber Feudorum* was probably made under the Hohenstauffen Emperors, but it contains the *Coutumes* (*Consuetudines*) of a much earlier period, and they are more full and exact than any of the feudal *Coutumes* of France. There were other forces which restrained the development of feudalism in Italy.

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1. Under the Carolingians there were said to be a hundred Counts, vid : *Il Diritto Feudl e la loro Storia nell'Italia Meridionale* per Nicola Santamaria.

The frequent invasions to which Italy was subjected, prevented the Counts from maintaining their independence in their isolated castles, and they were obliged to seek refuge behind the city walls. As we before remarked, wealth did not only consist of landed property, but also of capital, which was used in the development of trade and commerce, and this gave to the civic class in the Italian towns an importance and power which placed the members of that class on a level with the feudal Counts, and they were always ready to repress any aggression on their rights and privileges. Morbio gives us some very interesting examples of this. In his short sketch of the history of Florence he writes: "The inhabitants, active and industrious, were wholly given to commerce, and so their riches increased, and also their population. But outside the walls of the city were the castles of the feudal lords, who were in the habit of exacting tribute from the merchants and wayfarers. Similar tributes were exacted in other places which were not dependent on Florence. The Florentines, intolerant of these exactions, so injurious to the diffusion of the products of their industry, determined on rendering their commerce free, even by force of arms. As early as 1107 they engaged in a struggle with the seigneurs of Montorlandi. On this occasion they used all the arts to persuade the peasantry that

the object of the republic was to liberate them from the oppression of the seigneurs. I do not know whether the condition of the peasants was much improved by this change of masters, by the substitution of their dependence on the republic for their dependence on the seigneurs of Montorlandi, but this action affords certain indications, by which we may judge of the character of the people and of the policy which they had adopted, and ought to lead us to consider with attention the cases of Montebuoni and Semifonte. The first happened in 1135. Montebuoni was a castle of the Buondelmonti. The Florentines compelled this family to destroy it, and possessing what goods they might wish, that they should take up their residence in the city. This plan of calling the great to obedience in the city, after having destroyed their castles, came to be practised against all other feudatories. The attack of Semifonte was of an unusual municipal character. The district was prosperous and rich, and the Florentines had become jealous of the prosperity of others. They assailed the castle and razed it from the foundations. Such was their fury against those who dared to refuse them obedience."<sup>1</sup> This simple narrative of Morbio explains very clearly one of

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1. Morbio *Storie dei municipi Italiani*. Cenni della repubblica di Firenze p. XXII.

the causes why the feudal lords in Italy could not succeed in establishing their power to the same extent as did the seigneurs in France, but it tends also to confirm the view which I maintain, that even though the Italian towns may have lost some of their communal rights, they yet possessed a large measure of independence, which was so necessary to their prosperity. But the compulsory residence of the seigneurial families within the city was not without its difficulties and dangers. They brought with them, not only their retinue of retainers, but also the jealousies and intrigues which had separated them in their feudal homes, and those palaces which are to be found in almost every town in Italy, and which impress us rather by their massiveness than by any beauty of architecture, may be regarded as substitutes for those strong castles which they had lost, or had been compelled to destroy. From these civic palatial strongholds they soon began to frown defiance on their old enemies, and we are reminded of the variances of the Montecchi and Cappelletti,—the Montagues and Capulets so graphically pictured by Shakespeare in *Romeo and Juliet*.

Indeed, Florence in the thirteenth century was torn by these factions in which the Buondelmonti played an important part. A young Buondelmonti had plighted his troth to a lady of the Amidei family, but afterwards attracted by

the charms of one of the Donati, forsook his first love, and married the fair Ciulla Donati. The Amidei were closely connected with the Uberti, and the two families determined on avenging the injury, and the dead body of the young Buondelmonti was found one Easter morning at the foot of the statue of Mars, in a public spot. A bitter strife began between the Amidei and the Uberti on the one side, and the Buondelmonti and Donati on the other. At length the Uberti faction, suffering from the superior force of their rivals, implored the assistance of the Emperor, while the Buondelmonti sought the aid of Rinaldo, the head of the house of Este. The imperial party represented the Ghibelines, the house of Este the Guelphs.<sup>1</sup> It was in this way that these two great factions found in Florence the scene of their long and bitter contest.<sup>2</sup> The families of Florence became ranged on either side, and the prosperity of the city suffered very greatly. Dante's family and he himself had been Guelphs, and he had married a Donati, but believing that the only hope

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1. The long contest between the Ghibellines and the Guelphs may best be studied in Muratori's *Historia Estensis*, or in *Die Geschichte Heinrichs des Löwen von Dr. Martin Phillipson*. The origin of the family has been the subject of a good deal of discussion.

2. Dante *Paradiso* XVI. 1. 69 and 145, also *Inferno* X. For the story of Buondelmonti see *Il Pecorone di Ser Giovanni Fiorentino*.

for Italy was in the strong administration of the Emperor, he became a Ghibelline, and when at length the Guelphs gained control of the city, he was banished.<sup>1</sup> Though the towns had asserted their independence, the struggle with the Empire was not ended. Lothaire, the last of the Italian branch of the Carolingian line, exercised authority in conjunction with Beringar, the representative of the Lombard royal line. Lothaire married Adelaide, the daughter of Rudolphe, Duke of Transjurane Burgundy. His early death left Adelaide a widow, and she was now to play an important part in Italian and German history, while her only daughter Emma was to acquire an unhappy importance in the history of France. Adelaide was even more remarkable for wisdom than beauty, and Beringar sought the charming widow for his son Adalbert. Adelaide, however, rejected the proffered hand, and after being tempted by gifts and honours, still remaining obdurate she was cast into a dungeon. She escaped by the aid of a priest, the faithful Mar-

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1. See his *De Monarchia*. He was twice banished but was allowed to return after the first occasion, but again in exile and after years of great sadness he died at Ravenna, in his 57th year. Troya has preserved in a letter, written by Fra Illario del Corvo to Uguccione the touching picture of Dante presenting himself one day, worn out by fatigue, at the gate of a convent of Sta. Croce del Corvo. The monk who opened the gate, not recognizing Dante in the weary stranger, asked him what he sought. He simply replied "*pacem.*" Troya *Storia D'Italia* appendice al codice Longobardo p. 209.

tin. The pen of Arioste<sup>1</sup> has drawn a vivid picture of Adelaide's flight and her many adventures till she found temporary protection from Albert Azzo, Duke of Modena, a member of the house of Este. But the trials of Adelaide excited more than one chivalrous hero north of the Alps. Her beauty, her wisdom, and her virtue, Beringar's unpopularity, and the disturbed state of Italy, all united in stimulating the German Otto to at once recover the lost inheritance of Charlemagne, to liberate the oppressed widow, perhaps win her affection, and the sceptre of Italy, of which she was the inheritrix.<sup>2</sup> Otto soon made his preparations, marched over the Alps, and surprised Beringar by the rapidity of his movements. The Lombard king fled, leaving Milan and Pavia to Otto, who proclaimed himself king of Italy. Otto became the royal wooer of Adelaide, now, at the castle of Canossa—that castle afterwards the home of the celebrated Countess Matilda, and we are re-

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1. Orlando Furioso B III.

2. Hugh of Provence had put forth claims to succeed to the kingship over Italy, in opposition to Rudolphe of Burgundy. It was out of the complications that arose that Hugh surrendered part of Provence to Rudolphe, and it was through this action that the small kingdom of Arles was founded. Beringar had aided Hugh, but afterwards quarrelled with him, and in the war which followed, Beringar became a fugitive at the court of Otto. This was some years before the events mentioned above. vid. Giesebrecht B.I. s 316.

minded of another scene the humiliation of Henry IV. at the feet of the haughty Gregory VII. Adelaide showed no reluctance, and was conducted to Pavia, where the nuptials were celebrated with great magnificence. It was the festival of Christmas, and the wedding and the holy day made the occasion doubly joyful. But the affairs of the Northern kingdom required Otto's presence, and with Adelaide, he crossed the Alps—the king and queen of Germany and Italy. Again Beringar asserted his power, and the Pope John XII. turned to Otto, already king of Italy, for deliverance from the Lombard. The Huns or Magyars had invaded the southern provinces of Germany, and Otto had first to turn against them, before he could obey the Pope's summons. Fresh from the victory of the Lechfeld, Otto once more marched to Italy, accompanied by the faithful Adelaide. Beringar now made a brave defence, but was defeated, and at length died, the last of the Lombard line, in honourable exile at Bamberg, which fortress had been assigned him by Otto. Otto had now come, not as an invader, but to claim his own, as the representative, through his marriage with Adelaide, of the Carolingian line, and as successor of the Cæsars. He was crowned at Milan as king of Italy, and after a short delay, he advanced to Rome. On the feast of the Purification the Pope placed the imperial crown on his

head, and proclaimed him Emperor Augustus. The Pontiff, as well as the whole Roman people, took the oath of fealty, while Otto, on the other hand, re-granted the possessions which the Pope had previously held.<sup>1</sup> By this arrangement the election of the Pope was to be conducted according to Canon law, banishment being denounced as the punishment of any one who should interfere with the freedom of suffrage. But this new Emperor of the Saxon line carefully guarded his own rights, and merely granted to the Pope the usufruct of the domain which was ceded. A mixed commission of judges, nominated by the Emperor and the Pope, was permanently established, and all causes were to be laid before this tribunal, and if justice were not done, there was to be an appeal to the Emperor himself.

The original of this arrangement, like the previous documents of Pippin's and Charlemagne's donation, has disappeared, but what purport to be copies, have been preserved. These were the circumstances under which the Holy Roman Empire was transferred from the Carolingian to the German house. The Saxon line of the Ottos I., II. and III. continued to

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1. Das privilegium Otto I. für der Römische Kirche von Th. Sickel. Giesebrecht B. I. 2. Annales Muratori. Liber Pontificalis II p. 146. Johannis Papae vita. Baronius An Ec anno 962.

exercise authority over Italy. Their government was mild and considerate. Several of the old Marquisates and Duchies were replaced by new ones, with which Otto I. invested several members of his own family, thus securing his position in Italy. The three Ottos encouraged the Communes, extended their privileges and confirmed their municipal constitution, granting them communal jurisdiction. This was doubtless for the purpose of counteracting the jurisdiction which the Counts had assumed to exercise. The noble families, however, had in many instances intermarried, and in such cases became sufficiently strong as in some measure to control the popular magistrates, and the judicial communal government. Through a long course of years the civic life of Italy was marked by incessant emulations and contests. Some of the cities, and especially those along the coast, which had developed an extensive commerce, were sufficiently strong to resist the power of the nobles. In many places the nobles, urged by a strong desire to acquire wealth, began to throw in their lot with the citizens, and engaged in mercantile pursuits.

The liberties of the cities, which had been so extended under the Ottos, had given rise to very varied forms of government. They did not by any means restore the old municipal government of the Romans. Indeed no two present

exactly the same form, and this difference prevented any harmony in their interests, or any sympathy in their general development. It rather contributed to foster the too evident hostilities which they bore one another, and many complications arose out of these relations, in both foreign and domestic rule. The period between 1000 and the accession of Frederic Barbarossa may, however, be regarded as the heroic period of the Italian Republics. The barbarism of the Lombards had become toned down to a new civilization. The manners, and even the language of the people, were undergoing a change, while chivalrous feelings were arising. Poetry, the arts, and public worship were taking their respective forms.. We may well believe that literature, science and art had not been so neglected in Italy as they had been north of the Alps. There were, at all times, historians in Italy; some judicious and trustworthy, others mere rude chroniclers whose works are of little value. But the Crusades opened up new fields of study, and the connection with Byzantine and Saracenic culture had a great influence on Italy, and when there was a revival of literature, it began a century and a half earlier than in France, Germany, or England. Dante and Petrarch,<sup>1</sup>

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1. Petrarch especially marks the rise of a new literature. Philosophy and Theology however received as much attention in the north as in Italy.

the poets of the Italian Renaissance, as well as Boccaccio, wrote while northern Europe was still in comparative literary darkness. It was, too, in the twelfth century that Nicholas of Pisa broke the slumbers of Medieval art, and awakened Italy to new studies in art, in architecture and in painting.

The Crusades were a direct appeal to the religious feelings of the people, and many when going to the east, made over their possessions to the church. The churches in this way became wealthy, while the towns vied with one another in their ecclesiastical edifices. Then were erected many of those magnificent cathedrals which have since been the admiration of the world, and which tell of the prosperity of the towns, of the spirit of devotion, and not least, of the general improvement in taste and culture. This only makes us regret the more deeply that the towns preserved such an entire isolation. There was little or no harmony between them for each sought its own interests, too often to the prejudice of others. It seems strange that they did not combine in their opposition to the Emperors who, after the Ottos, so often oppressed them. There was no combination such as the league of the Hanse towns, or of the towns of the Rhine district. Only at length did external pressure lead to such a union, and in opposition to Frederic Barbarossa the towns for a

little laid aside their mutual jealousies, and formed the Lombard and the Tuscan leagues. It was this combination which enabled them to gain the victory at Legnano. The peace of Venice, in which Pope Alexander III. took an active part, was a compromise. The imperial party insisted on maintaining the terms of the Diet of Roncaglio, where a little before, the Emperor had asserted his full dictatorial rights, had gained entire control of the municipal government, and claimed the right of appointing a Podesta, or local Governor. The representatives of the towns, on the other hand, insisted on maintaining their privileges intact. The peace decided on at Venice was only concluded at Constance. By its terms the sovereignty of the Emperor was acknowledged, and his ancient rights recognized, but the privileges and the independence of the republics were also acknowledged, and with these the Emperor was not to interfere. They were to appoint their own Podesta, who was to be free to administer justice according to their own laws.

We have mentioned that the municipal government of the cities differed very much, but after this period, there seems to have been some general features, which were common to all. There were three Councils, the general, the special, and the secret, and magistrates, who whether, as consuls, praetors, pro-consuls, judges, or procurators administered the judicial and financial af-

fairs of the kingdom. Every free citizen, from the age of eighteen, was admitted to the general Council. Those, however, who gained their livelihood by handicraft or low trade, were not allowed to take part in public business, though there was no law, but only custom, which excluded them. Usually the general Council nominated the magistrates, and the members of the other two Councils, not directly, but by deputies chosen from each of the tribes, or arts, or wards, into which the city was divided. The special Council had the control of all the ordinary business of the Republic. The secret Council was constituted of a select number of the magistrates, and the *Juris Consulti* with the consuls and certain other magistrates were allowed seats in the Council, but had no vote. All men between eighteen and seventy were required to render military service, and this must have constituted a large force, especially when the several republics combined, and the wonder is that they should so long have submitted to foreign rule, for the battle of Legnano shows what they might have accomplished. As soon, however, as the external pressure was removed, the leagues broke up, and the cities lapsed to their former isolation, and failed to reach any important results. Jealousies and petty quarrels destroyed all harmony, and Italy became the scene of a contest between the two great aspirants to power, the houses of An-

jou and Arragon. The demands of the Papacy, and the struggles regarding investitures, tended to still further separate parties.

The whole municipal government, however, underwent a change when those princely families, that had made their homes in the cities, acquired wealth, and by intermarriage gained great power and became the princely rulers of the towns in the fifteenth and sixteenth centuries, the Medici in Florence, the Eccelini, the Sforzas, and the Visconti. Indeed there was scarcely a city of North Italy that did not come under the rule of some one or other of the princely houses. This certainly did not conduce to the union of the towns, and Italy has not been so united as it is at present.

## LECTURE XIX.<sup>1</sup>

### THE RISE OF THE FRENCH COMMUNES.

The struggles for enfranchisement made by the Hanse towns, by the towns of the Rheinische Bund, and those of Flanders, and of Italy, were very nearly contemporaneous. The desire for independence seemed eminently contagious, yet the immediate causes were by no means the same in the several instances, nor were the results in each case alike. We now propose to consider the movement in France. France was one great field of feudalism. All parts had come under the rule of feudal seigneurs, not merely the rural domains, but the towns also, not only the villages that had grown up around the chateaux, or the monasteries, but also such towns as Paris and Orleans, Soissons, Laon, and

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1. Books consulted :— *Les Communes Francaises a L'Epoqué des Capetiens directs*, par M. Achille Luchaire. *Histoire de France Par Ernest Lavisse T. II. pt 2*-par Achille Luchaire. *Essais sur L'histoire du Tiers Etat*-par Augustin Thierry. *Lettres sur L'histoire des Francais* par Augustin Thierry. *Histoire de La Civilization en France* par M. Guizot. *Essai sur l'histoire du Droit Francais au Moyen age* par M. Ch. Giraud. *Le Tiers Etat*, deux articles par M. Mignet, *Journal des Savants* 1855. *Les Coutumes de Beauvaisis* par Phillipe de Beaumanior edit par Am Salmon. *Le Polyptyque de l'abbé Irminon* edit M. B.

Rheims. Paris indeed enjoyed a partial independence. A Fraternity, which may almost be regarded as a Gild, called the Merchants of the Seine,<sup>1</sup> had played an important part in the repeated sieges by the Normans. They had acquired extensive control, in municipal affairs, and for the aid which they were able to lend to the Counts of Paris, the earlier members of the Capetian dynasty, they seem to have been allowed to retain some measure of independence.

M. Kluckhohn, in his interesting work on the Truce of God,<sup>2</sup> has traced the growth of the movement for the enfranchisement of the French Communes, and has distinguished three periods in the struggle. (1) The first was by means of spiritual or priestly efforts to rouse the people against the oppression of the seigneurs. The second was the movement known as the Truce of God, and the third was the great effort of the people when the church withdrew from exercising a guiding influence, and the towns were left

Guerard. *Assises du royaume de Jerusalem* edit M. Victor Foucher. *Coutumier de Normandie* edit M. Joseph Tardif. *Le Tiers Etat d'après la Charte de Beaumont* par Ed. Bonvalot. *Histoire du Droit et des Institutions de France* par M. E. Glasson. T. 5, *Geschichte des Gottesfriedens* von A. Kluckhohn. *Städte und Gilden unter Germanischen Völkern im Mittelalters* von Karl Hegel. *La vie de Guibert de Nogent*, tr Guizot's collection des *Memoires*. *Histoire du Droit Municipal* par M. Raynouard.

1. *Aquæ Mercatores*

2. *Die Geschichte des Gottesfriedens.*

very much to themselves, to depend on their own efforts to gain their enfranchisement. About 989 the Bishops of Aquitaine, moved by a sense of the prevailing evils existing generally in French society, and of the oppression to which the seigneurs were subjecting their tenants (Censitaires) decreed: "Let him who breaks into the churches and carries away anything by force be anathematized, and let him also be anathematized who does injury to the peasant, or the poor, and takes from them their sheep, their cattle, or utensils." This movement by the good Bishops of Aquitaine roused some of the better seigneurs, and in a general Council of Aquitaine, in which the princes and barons were present, the Bishop of Puy issued, with the consent of the Council, an excommunication against anyone who should pillage the churches, the chateaux, or the cottages, or who should molest, or rob the merchants on their routes, or should steal or kill horses, cattle or other beasts of burden. Where this excommunication was disregarded, the whole district was placed under interdict, religious services were suspended, the churches were closed, and the sacraments refused. The effect was a temporary cessation of the oppression. The movement extended, especially in the south of France, where a spirit of enthusiasm moved the lower clergy and the peo-

ple, and they took up arms against the seigneurs. They formed troops and marched through the country, too often committing outrages more grievous than those they had sworn to combat. The seigneurs, on the other hand, took up arms and united in self-defence. A famine tended to aggravate this revolution. The undisciplined troops of peasants and artisans as also the priests, were not able to oppose the barons with their armed retainers, nor to besiege the feudal fortresses. In one battle seven hundred priests were slain, and the whole effort failed, having only served to increase the bitter feeling which existed between the seigneurs and the roturiers. At the end of another sixty years, a different scheme was proposed which, though really chimerical, seems to have taken possession of the religious mind. It too had its origin in the south of France. The leading spirits in the movement were Bandaud, Archbishop of Arles, Benedict, Bishop of Avignon, Nitard of Nice, and Odilon, Abbot of Cluny. They believed that they were the organ of a divine inspiration, and, under a profound conviction, they addressed to the bishops of Italy, as well as of France, a circular, explaining their idea and urging united action. "Receive," said the circular, "and preserve the peace, and this Truce of God which we have received from Heaven by the inspiration of Divine mercy." The truce was of certain days

which were to be devoted to God and to peace; the fifth day of the week, in memory of Christ's ascension, the sixth in memory of His passion, the seventh of His burial, and Sunday of His resurrection. They would bless and absolve any who observe this peace (*hanc Chartam et Dei treuvam*), and they condemned and cursed any who should violate it. Any murder committed on those days was to be punished by exile, or a pilgrimage to Jerusalem. It is difficult to imagine a more silly piece of blind fanaticism. It was not possible to carry out a mere resolution framed in the privacy of a cloister or a cathedral, without any power or authority.

The men of war, accustomed to daily contest and deeds of violence, were not likely to attach any importance to a mandate so unauthoritative and so unreasonable. The week was virtually divided into two parts, the one, it might be, for murder and pillage and incendiary, the other to be devoted to penitence. On the Wednesday evening the bells sounded the Truce of God, when the evil doer was to lay aside his misdeeds, to take them up again, if he chose, after four days. This strange historic fact, however, illustrates the impotence of a limited or primitive education, and the great power which a cult externally pompous, varied and dramatical, may exercise over an unenlightened people. The Truce of God extended rapidly throughout the

south of France and to some parts of the north, through Normandy into England, and into Germany by Liege and Cologne.<sup>1</sup> But it effected no permanent results and the relations of the seigneurs, and the roturiers, whether peasant or Bourgeois, remained unchanged. We may, however, be made to realize more strongly the oppression exercised by the feudal lords, and the growing necessity of seeking enfranchisement from their rule. It was evident that the purer and better minds sympathized with the roturier in his trials and humiliations, but it was also evident, that any improvement in his condition must come from his own movement. The exact terms of the Truce of God were not strictly maintained, yet with time and gradual extension of higher views, a simple oath to keep the peace was exacted, and the French clergy exerted themselves to extend this fraternity of peace [*jurati pacis*]. But as I have just said, this had no effect on the feudal system. All that it did was to show the advantages of combining for a definite purpose, and the *jurati pacis* may have generally passed over to the *jurati communiae*. The term Commune was apparently borrowed from Flanders, though it seems also to have been used in Italy. It was not, at first, at

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1. Vid Giesebrecht B. III. p. 600. There is a decree of the Emperor Henry IV. establishing the Truce of God. It was renewed at the Council of Rheims (1119), vid. Ducange, sub voce, Treuga.

least, applied to a town, but to those citizens who bound themselves by a common oath to certain duties and obligations, as well as qualifications. They were bound to use all means to obtain enfranchisement from feudal control, and having gained it, to preserve it. They must be healthy in body and mind, so as to be capable for any duties and responsibilities which might fall to them to discharge. They must take also their share of any pecuniary burden which necessity might entail. Certain parties, as those who were bound by special obligations to a feudal lord, and especially priests, were exempt from the Communal tax.<sup>1</sup> But a Commune did not always restrict its powers within the walls of the town. The rural labourers suffered even more than the denizens of a town from the oppression of the seigneurs, and were now allowed to enroll themselves in a Commune.<sup>2</sup> In

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1. As there will always be those who seek to shield themselves from pecuniary burdens, so many laymen, merchants and others took priests orders of some kind or other, in order to avoid the Communal tax, and this may be the origin of that custom still practised, for laymen to connect themselves with one or the other of the church orders, though not discharging any of the duties of a priest.

2. The power of a seigneurial Commune often extended a league beyond the City walls, and this space was called the *Banleuga* or *Banlieu*, a name quite familiar to us in Canada, as so very generally used in the Province of Quebec. It included not only the suburbs, but any villages within the prescribed district. The distance of the league was not always adhered to, and it is very doubtful if this limit was observed by the sworn Commune.

doing so they came under the same obligations as the town members, as well as under the jurisdiction of the municipal or Communal Courts, so soon as these were established.<sup>1</sup> When these obligations were not fulfilled the recusant was excluded from membership of the Commune, and under certain circumstances a fine might be exacted, though it was difficult to compel payment. The Communal constitutions were not all of the same character, and M. Thierry has classified them, according to their origin and their municipal organization, in three zones. The south, where the consular form prevailed, the north, or the district of the sworn Communes, and the centre, where the towns gained some measure of independent municipal government, but were under the jurisdiction of a seigneurial officer, called a Prevot.<sup>2</sup> There is no doubt that the towns of the south of France had developed more fully the Roman municipal system than those of the north. They had too accumulated considerable wealth in the form of capital, for they had maintained from early times extensive commercial relations with the coun-

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1. M. Luchaire gives some instances of the association of vils and bourgs with the Commune. Sometimes this association gave rise to difficulties, and a bourg or vil had sometimes even to ask the interference of the seigneur, to deliver it from the exactions of the Commune. Luchaire *Les Communes Francaises. La commune rurale.*

2. Thierry makes a further division into five Zones, into the consideration of which it is not necessary to enter.

tries of the Mediterranean. The consequence was that the feudal system did not, in the south of France, acquire any very great power. It was in this region, as we have seen also, that the early efforts of the clergy were made to ameliorate the condition of the roturier, in which movement some of the seigneurs had associated themselves. It was there too, that that strange scheme of the Truce of God originated and influenced the classes, showing that a more liberal spirit prevailed. It was largely with the co-operation of the seigneurs that the towns were allowed to retain, or re-acquire, their municipal independence on the model of the old Roman Municipia.

The north was the home of the sworn Communes, which as a rule only gained their enfranchisement after a struggle, and whose constitution was formed almost entirely on the model of that of the Flemish cities. This group included the towns in Picardy, Artois, Champagne, the Isle de France, Normandy and French Flanders. Normandy, however, while under the rule of the English, Norman and Plantagenet kings, seems to have enjoyed in some measure the freedom of the English Boroughs. Rouen and Rochelle had early their mayors and an elected body of magistrates and Councillors.<sup>1</sup>

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1. Hegel, Städte und Gilden B. II. C. 3.

Similar concessions were subsequently granted to the other towns. When, however, Normandy came under French rule, Phillip Augustus deprived the Norman towns of several of their privileges.

Thierry's third division comprises the towns in the central departments. It is difficult to determine the origin or the exact form of these municipal constitutions. They acquired certain Communal privileges, but in regard to general political and judicial matters they were under the jurisdiction of a Prevot, who was appointed by the seigneur, and these cities were named Prevotal cities. When the cities gained their enfranchisement from seigneurial rule they framed a charter, for which the charters of the Flemish cities afforded a model. The charters of St. Quentin, of Noyon, and Laon, which had been copied from the charters of the Flemish cities, were in turn very closely followed by many others. The charter of Soissons was reproduced, word for word, in those of Fismes, Sens, Compiègne, and Senlis, and was carried into Burgundy, and in order to adopt it, the citizens of Dijon renounced the charter which they had already gained. This Commune of Dijon made the change with the consent of the Duke of Burgundy, but the citizens stipulated that the new charter should for greater security be placed under the guarantee of the king; and in order to

show you the form under which many of the towns obtained their independence, and received the royal guarantee, I shall quote the act by which Phillip Augustus gave force to the desire of the citizens of Dijon: "In the name of the Holy and Indivisible Trinity—so be it. Phillip, by the grace of God, King of France. We make known to all present and to come that our faithful and brother, Hugh, Duke of Burgundy, has given and granted in perpetuity to his men of Dijon a Commune, or Constitution, on the model of that at Soissons, except the freedom which they already enjoyed. The duke and his son Eudes have sworn to maintain and preserve inviolate the said Commune. It is for this reason, and according to their request and wish, we guarantee the maintenance of the same under the form, hereafter mentioned as follows:—If the duke or one of his heirs wishes to dissolve the Commune, and to relieve himself of its enactments, we engage ourselves by all our power to oblige him to observe them, and if he refuses to accede to our request, we will take into our safe keeping the persons and the goods of the citizens, and if a complaint is brought before us in this matter, we will, within forty days, and according to the judgment of our court, repair the injury received by the Commune through the violation of its charter."

This was apparently the general form in

which a Commune sought its freedom, and, when it so desired, obtained the royal guarantee of its charter. We have quoted this instance as showing the part which the king generally took in regard to the charter of a Commune, when his guarantee was asked. Some of the older historians have maintained that the Communes of France received their enfranchisement from Louis VI. There is no ground for believing this, as may be seen from a consideration of the state of France at that time. Only a small part of France was then subject to the French king. North of the Somme, the country was held by the Count of Flanders, whose acknowledgment of the suzerainté of the king of France was purely nominal. Lorraine, a good part of Burgundy, Franche Comté, and Dauphiny were under the suzerainté of the Emperor. Provence, Languedoc, Guienne, Auvergne, Limousin, and Poitou were independent states, under counts or dukes, who only recognized the royal suzerainté in form, and disputed it at will. Brittany also maintained its independence, while Normandy was obedient to the English crown, and Anjou, though a fief of the crown, yet maintained some degree of independence. Now in these several counties, which constituted the greater part of France, the king had no right to exercise any authority over the Communes. When the royal seal was affixed to any of the charters it was

merely as a recognition of it, and in many instances guaranteed the observance of its terms, but certainly did not create it. But though these struggles of the Communes may be said to have been entirely spontaneous, and while outside of the royal domains the king had no right to grant a charter of enfranchisement, yet we find that he was almost always on the side of the Communes against the seigneurs, and this perhaps largely from selfish motives; for whatever tended to weaken the power of the feudal lords must naturally have increased the power of the crown. But the history of these struggles is a long, and a very diversified one. The movement was protracted over about two centuries, and was attended by different results.

A city which was the seat of a bishop was wholly, or in part, under the seigneurial rule of the bishop. It was, however, often difficult to point out exactly where the rule of the lay or of the ecclesiastical seigneur ended. Not unfrequently a lay seigneur had erected a citadel within the walls of a city, which was at the same time an episcopal seat, and he disputed with the bishop for the exercise of seigneurial rule, and this, not only in the outlying rural seignury, but in the city itself. There were instances where royalty, even outside of the royal domain, played a distinct part. Such were those cities where, on some pretext or other, as for the pur-

pose of exacting certain subsidies or royal taxes, the crown took the opportunity of stationing a military force ready on the first occasion to assert royal authority. Happily for the citizens, the three lords—king, bishop, and lay baron—did not agree, and it often became possible to play one against the other, so that by the aid of one or the other party, the citizens succeeded in gaining their enfranchisement. It is supposed by some historians that the bishops and the church usually sided with the people in the movement. As a general representation this is not correct. The church, though having an ostensible unity, was far from being harmonious. For the most part the interests and the sympathies of the bishops and the greater abbots were with the feudal seigneurs, for very many of them were themselves proprietors of extensive seigneuries. On the other hand the inferior clergy, because they were of the people, sympathized with the people. But the relations of the citizens with either the bishops or the lay lords were so varied that they require to be studied in each individual instance. Thus the Commune of Auxerre was established with the consent and by the aid of the Count of Auxerre, in direct opposition to the Bishop of Auxerre.<sup>1</sup> On the other hand the Bishop of Amiens sided with the citizens of Amiens against the count. I would re-

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I. Thierry, lettre XIII.

mind you that in the south of France the bishops, as a rule, showed themselves as the friends of the citizens, and in many instances the guardians of the rights of the Communes. In other parts of France, as in Burgundy, and French Flanders, the bishops, by force of arms, as well as by anathemas, carried on a struggle which proved destructive of the political interests of the citizens, as well as of the privileges of the seigneurs. It may be well to illustrate these struggles for enfranchisement by the example of one or two of the cities, and I shall take Laon and Rheims, not only because they are important, or because their history, quite apart from these struggles, is interesting, but because they present two essentially different phases of this Communal revolution. Laon<sup>1</sup> was a strongly fortified town where the kings of France more than once found a refuge. As in many other cities the bishop exercised seigneurial rule. Succession to this rich arch-episcopal seat was subject to the approval of the king, who made it, on more than one occasion, a source of revenue to the royal exchequer. One of its bishops was Mons. Gaudry, a Norman by birth, and a courtier at the court of Henry I. of England. He was one of those who had fol-

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1. I derive my information regarding Laon from Mon. Thierry's *lettres sur L'histoire de France*, Let. 16, 17, 18, and from *La vie de Guibert de Nogent* as contained in M. Guizot's *Collection des memoires*.

lowed the fortunes of the Norman princes in England, and had enriched themselves by taking possession of the goods of the conquered Anglo-Saxons. Like many of the seigneurial bishops of that period he preferred the helmet to the mitre, and the coat of mail to the surplice or the stole. He was more conversant with tales of battle, and could talk more glibly of the chase and of arms, or of his hounds or his horses, than of his breviary. His life was stained by immoralities and even crimes. A good part of his time was spent in England, and the government of his diocesan seignury was badly administered during his absence. At length, instigated by the example of other towns, the citizens organized themselves as a Commune, and framed a charter of their privileges after the model of that of Noyon, and St. Quentin, which they forced on the acceptance of the representative of the bishop. On his return the bishop, unable to contend with the state of affairs, accepted the situation, to use a modern phrase, on condition of the payment of an annual subsidy. He renounced for himself and his successors the ancient rights of the seignury, and swore to maintain the privileges of the citizens. Having thus secured the recognition of their Communal rights by their ecclesiastical seigneur, the citizens further solicited the royal guarantee for the maintenance of their charter, and obtained its

ratification, on condition of the payment of a further annual subsidy to the king. But the bishop was an extravagant man, and the money by which the citizens had bought off his claims did not long satisfy his luxurious habits. The clergy of the Metropolitan church were not less extravagant in their degree than the bishop, while the nobles, unable to continue their exactions, shared the regrets of the prelate, and his resentment against the Commune. They all therefore united in their determination to destroy the charter, and to reduce the citizens to their former subjection. Now began a bidding for the royal support, the people for the maintenance of their charter, the bishop, the clergy and the barons for the revocation of the royal guarantee. The clerical party outbid the citizens. In April, 1112, three years after the citizens had entered on the enjoyment of their Communal rights, the contest re-opened. The charter sealed with the royal seal was declared void.

The story of this contest is perhaps the saddest in the history of the struggles of the Communes. The streets of Laon flowed with the blood of her best citizens. Bishop Gaudry perished in the bitter conflict, and his body, with the bodies of several of his clergy, and of his lay supporters, was thrown into the ditch which surrounded the ramparts of the town. Laon at length found one to espouse

her cause in Thomas de Marle, Lord of Crecy; and after a series of cruelties, abominations and murders, which would seem to have anticipated the horrors of the revolution at the close of the eighteenth century, she received the final acknowledgment of her rights from Louis VI. We gather from the prelude to the charter, that it was not limited to the town itself; it speaks of "The establishment of peace at Laon, which extends from Aidon to the wood, so that the village Muilly and all the extent of vineyards from the mountain may be comprised within these limits." These rural districts had doubtless attached themselves to the Commune. The charter of Laon, which was not singular, evidently presents a recognized society, and not merely regulates the future relations between the seigneur and the Commune. It purposes to give to a community, which had hitherto existed in a state little above semi-barbarous anarchy, and without any form of self-government, a civic organization, with police laws, and means of order and duration, with security to individual rights and privileges. Rheims has a somewhat different history, and the ultimate results of its very long struggle were not so satisfactory as that of Laon, or of most of the Communes, as we shall show in the next lecture.

## LECTURE XX.<sup>1</sup>

### THE STRUGGLE OF RHEIMS FOR ENFRANCHISEMENT. THE EFFECTS OF THE ENFRANCHISEMENT OF THE TOWNS ON FEUDALISM, AND THE ENCROACHMENTS OF THE CROWN ON THE PRIVILEGES OF THE TOWNS.

Rheims is one of the oldest cities in France. It enjoyed some importance under the Romans, and tradition even said that it had been founded by Remus, the brother of Romulus.<sup>1</sup> I have repeatedly directed your attention to the fact that in the oppression of the old Roman Municipia the church had very often come to their help, and had sought to alleviate their burdens. The bishops, who had very generally thrown themselves into the struggle, had gained great power in their dioceses. They acquired great possessions, in the enjoyment of which they had not

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1. Books consulted :—The same as for last Lecture, with the addition of Flodoardus, *Hist. del' Eglise de Rheims*.

1. When Julius Caesar conquered Gaul, Rheims was already a city of considerable importance, and under the Romans it became the capital of Belgic Gaul. It suffered severely on two separate occasions from the invasion of the Huns, but through the wise effort of its arch-bishop

been disturbed to any extent by the Franks. By commendation and otherwise, these possessions had been very much increased. In this way Rheims had become one of the richest and most influential dioceses in France. Like Laon, it was an episcopal feudatory, having a large number of suffragans, who not only stood in ecclesiastical relationship, but were feudal vassals of the archbishop. In the beginning of the twelfth century, when the Communal movement had become general, and some ten years after Laon had acquired her enfranchisement, the citizens of Rheims resolved to throw off their subjection to feudal rule. In 1138, during the vacancy caused by the death of Archbishop Renaud, they formed a *Compagnie* or Commune, which was to be independent, not of the spiritual, but of the political power of the archbishop. In the case of a vacancy the king was the patron of this Metropolitan see. The reigning king Louis VII. was not on friendly terms with the Pope, Innocent II., and this

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Remigius, it rose out of its ruins to increased dignity and power.

Flodoardus says that the apostle Peter ordained Sixtus as first bishop of Rheims. He also states that Timothy preached here with Appolonarius, and that they both suffered martyrdom, and he names four or five bishops before Remigius. It was through the effort of Remigius, together with the influence of Queen Chlotilda, that Clovis was converted to Christianity, and on his return from the battle of Tolbiac received at Rheims Christian baptism. Since then nearly all the kings of France have been crowned in the Cathedral at Rheims.

retarded the appointment of a new archbishop. This long interval afforded the opportunity for the citizens to mature their plans, while it removed the opposition which the ecclesiastical seigneur was certain to offer. The king was not disposed to dissolve the Commune which was now formed, though strongly urged to do so by the Metropolitan chapter and Bernard of Clairvaux. The clerical Curia at Rome, however, began to be alarmed at the progress of the Communal revolution, which, communicating from one episcopal town to another, threatened to diminish the power of the bishops. The pope therefore made overtures of friendship to the king, and in a letter expressing kindly feeling, he reminded Louis of the strong sympathy which had in the past existed between the court and the church, and strongly urged him to suppress the movement at Rheims. The king, however, it appears, had already given his assent to the Commune, and had accorded a charter sealed with his great seal. The measures of the Commune excited corresponding action on the part of the rural parishes without the walls. These parishes had been under the jurisdiction of the Metropolitan chapter, or of some Abbey, of which there were several in the neighbourhood. These maintained that the charter accorded by the king to the Commune within Rheims did not apply to the parishes without the walls. The

opposition of the clergy, however, rather served to extend and to strengthen both the town and the rural Communes, and perhaps to excite a spirit of hostility which was soon carried to undue lengths. The clergy, alarmed at the rapid extension of the insurrection, sent urgent appeals to both the pope and the king, soliciting their intervention. The king was unwilling to annul his concessions to the Commune, yet fearing that the Commune was carrying the exercise of its power too far, and aware that the revenues of the churches both within and without the walls, were being very much diminished, he addressed some letters to the Commune, pointing out that it had exceeded the terms of the Commune of Laon, whose charter had been declared to be the model on which the Commune of Rheims had been established, since it had admitted to the Commune so many of the outlying parishes, and had in this way very seriously effected the revenues of the churches.<sup>1</sup> The king therefore insisted that the Commune should restore what had been taken from the

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1. Vid. Etude sur les actes de Louis VII, par Luchaire P. 114 for the decrees of Louis in 1140 during the vacancy, in which he condemned the conduct of the Commune in extending jurisdiction to the neighboring villages, and thus despoiling the clergy of their revenues. The Commune seems to have entrenched on the rights of the Abbés, and Louis confirmed these in their rights, especially the Abbé de St. Remi, over all the villages which had been granted by previous kings.

churches, and should henceforward respect the Canonical customs, and franchises, as well as justice. In 1140 Mons. Sanson of Malvoisin was inducted into the See which had been vacant for nearly two years. He occupied it for twenty years, from 1140 to 1160, and did not cease to oppose the Commune, which, in spite of all opposition and some sharp conflicts, continued to maintain the rights which it had gained. On the death of Mons. Sanson, Henry, the king's brother, succeeded to the archbishopric. He had been Bishop of Beauvais, and had used his utmost efforts to suppress the Commune there, and had induced the king to issue a decree, by which the rights of the Commune were very much curtailed, and in which it was expressly declared that the administration of justice was vested with the king. No sooner had Henry been appointed to the archbishopric of Rheims than he bent his energies to subject the Remois to his authority. His demands were so great, and were insisted on with such determination, that many even of the metropolitan clergy, and the lay vassals, were induced to take the part of the citizens. A bitter contest resulted in which the partizans of the archbishop were driven from the city. Henry now solicited the aid of his brother. Louis did not respond to Henry's appeal with alacrity sufficient to satisfy his wishes, and he turned for assistance to the Count of Flan-

ders, who soon appeared with an army of six thousand men. The members of the Commune had no force able to oppose the Count, and in their turn were obliged to flee from the city. The archbishop now offered terms of conciliation, and a treaty was agreed to, by which the members of the Commune were allowed to return to their homes, but were deprived of the Communal rights which they had striven so hard to maintain. Henry was succeeded by William of Champagne. This new archbishop was quite disposed to yield a good deal of power to the citizens, but the development of affairs underwent another change, and now the Metropolitan clergy urged the archbishop not to recognize the Commune. He had granted to the Commune the right of administering justice, but the chapter, which had a separate judicial power, complained that the concession of the archbishop had entrenched on its special privileges. In 1211, when Aubry de Humbert was archbishop, Phillip Augustus issued peremptory orders that the citizens were to submit in all things to the archbishop as their seigneur. In the meantime the citizens of Beauvais,<sup>1</sup> which was a suffragan

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1. In August, 1144, Louis VII confirmed the charter of the Commune, which had already been given by Louis VI to Beauvais, and regulated the respective rights of the bishops and the crown. Luchaire, *Etudes sur les Actes de Louis VII*, P. 144.

bishopric of Rheims, had established a Commune, but the king had appointed over it a mayor, or prevot, who was not a citizen. The Commune resented this interference with their rights, and an insurrection broke out in the town, which resulted in the death of several persons of distinction, and the bishop became a prisoner of the Commune. The other suffragans of the arch-episcopal diocese of Rheims repudiated this indignity offered to a colleague, and were determined to suppress the Commune of Rheims, which had ventured to approve of the action of the citizens of Beauvais. The archbishop and his suffragans united in a further appeal to the king and also to the pope. The pope did not hesitate to annul the Commune, and on a show of opposition he fulminated his anathemas against the Communal magistrates, and then against all the citizens. The suffragan bishops met in council, and issued a command to the king to aid in the suppression of the Commune. Louis IX. was now in possession of the kingdom, and he took means to maintain the full authority of the archbishop. For another hundred years the quarrel between the Commune and the clergy continued with varying results. At length in 1362 it was declared by the Metropolitan clergy that the Commune was abolished, and that all jurisdiction, civil and criminal, rested with the archbishop, who should also name all

the officials of the city, and should call the citizens to arms as he saw that necessity required. The king also was directed to destroy the Commune, as an illicit and dangerous constitution. Thus the Commune of Rheims, after nearly four centuries of struggle, ceased to exist. It never enjoyed the privileges for which it had striven.

Notwithstanding these struggles all the towns of France were gradually deprived of their municipal rights by the encroachment of the royal power, and indeed became entirely subservient to the royal will, but Rheims seems to have remained under the seignorial jurisdiction of the archbishop. There is every reason to believe that, from the tenth century, the growth of the towns in France was rapid, while many new towns had sprung up in the neighbourhood of monasteries or the chateaux of the seigneurs. Cottages had grown to hamlets, hamlets to villages, and villages to towns. The villages, or the towns, which had grown up in this way had been, till the time of the Communal revolution, inhabited by serfs, and were parts of the seignorial domain. In regard to ecclesiastical matters, they were parishes, though sometimes several were combined to form a parish. The centre of the parish was the church, established by the bishop, who consecrated the edifice and appointed the priest, though generally only with the consent of the

seigneur and the inhabitants. The priest exercised all the functions of his office, while he received the tithes and offerings of his parishioners, though a part was paid into the treasury of the bishop.<sup>1</sup> In case of a difficulty regarding the property of the church the priest appealed to the court of the seigneur, where he maintained the rights of his church. Under the Carolingians the powers of the priest in his parish were more extended, as we gather from the numerous Capitularia, and the frequent directions to the Missi. The priest was looked on, not merely as the representative of the bishop, but also of the king; and not only watched over the observance of public worship, and religious rites, but maintained the public peace.<sup>2</sup> Certainly he was not allowed to exercise such powers while under strict seigneurial rule. In the tenth century the right of lay patronage came to be very generally exercised, and with this the seigneurs claimed greater authority over the parishes. Still in these parishes there was divided rule, and however the seigneur might maintain his jurisdiction, the priest in all matters pertaining to the

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1. Capit. Ludovici I 825 in sacris canonibus prae fixum est ut decimae juxta episcopi dispositionem distribuantur.

2. Capit. Caroli Calvi 857, tit. XXIV-8th. Ut unusquisque presbyter inbreviet in sua parochia omnes malefactores, videlicet raptores, rapaces, adulteros, incestos, homicidos, latrones; et eos extra ecclesiam faciat, nisi poenitentiam agere voluerint.

church insisted on the recognition of his privileges, and we know how the church, even in its humbler spheres, never neglected to bring many matters, of even a secular character, under its control, and by means of anathemas to manifest its authority. But this divided jurisdiction was calculated to foster a spirit of independence amongst the parishoners, which there is no doubt the priest rather fostered, for he had no sympathy with the exactions of the seigneur, or with the oppression which he exerted. He belonged to another class, the class of the *censitaires* or tenants, and his sympathies were with the class to which he belonged. Now in the struggle of the Communes it is only natural to suppose that these rural parishes should wish to throw in their lot with the neighbouring town, and as I have already mentioned, those in the immediate vicinity—the *Banlieu*—actually did so, while it was to the advantage of the town to cultivate such an association, for these rural parishes augmented its power, and extended its Communal territory.

Now the three classes of cities that I have mentioned all sought, and generally obtained, the royal ratification of their charter, and this placed them, in a large measure, on the same footing. This ratification of the charter serves to show the growing influence or prestige of the king. It is impossible, in such a course of lec-

tures as this, to inquire into the terms of the respective charters, or into the privileges which the Communes had gained.<sup>1</sup> I shall confine myself to pointing out the general result of the struggle, and I remark, in the first place, that the interests of the towns that had acquired their enfranchisement bound them more closely together, but also bound them more closely to the crown, and proportionately separated them more and more from the feudal lords. For as the citizens were no longer subject to their feudal lord, they narrowed the sphere of his authority, and in some degree the extent of his domain, as well as his revenue. As there had been only two parties in the state, the noble and the roturier, so now the free citizens constituted a third party—the Tiers Etat—which as occasion called for, might lend its support to one or the other side, though its sympathies were most naturally with the roturier against the seigneur.

Secondly—As the king very generally fostered the growth of the Communes, and ratified their charter, so the Communes tended to in-

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1. M. Guizot *hist. de la civ. en France* lect. XVII, gives, with some fulness, the charter of Laon. M. Giraud *Essais. Hist. du Droit Francais* T. II. has published the Coutumes and municipal statutes of several of the towns. It may be well to remark that the term Commune ceased to be restricted to the original "conjuratio pacis," and was used of the free towns. The Curia of a Commune, its council or corporation, consisted of a mayor and a certain number of councillors called Echevins—a corruption, or modern transformation of Scabini.

crease the royal power, and indeed it was largely through the support which they now gave to the crown, that it ultimately developed into an absolute monarchy.

Thirdly—The Communes, by their struggles, weakened very much, any confederation which existed between the feudal lords, and tended to their separation.

Fourthly—The influence of the Communes often extended to the rural population, and even villages some distance from the towns, sought to connect themselves with a Commune.

Fifthly—With the freedom and security of the Communes, industry prospered, wealth increased, and the wealthy citizens became the aristocracy of the free cities, and they soon began to feel their growing importance, and the greater influence which they might exert.

You will see that the whole result of the enfranchisement of the cities was against feudalism, and rather in favour of the authority of the crown. On any occasion when the king needed their assistance against the feudal lords, they were ready to give it, but, as I have said, the influence and the aid which they gave to the crown tended more and more to establish its power, and before long the crown gradually encroached on those privileges which it had aided the Communes in acquiring, till one by one they were absorbed in the great process of cen-

tralization. (1) The crown encroached on the financial independence of the Communes. Their revenues were chiefly derived from taxes, fines, and forfeitures. Louis IX., on the pretext that these taxes and fines, etc., might interfere with the revenues of the crown, forbade the imposition of certain taxes without express license. (2) At a later period the crown went still further, and an ordinance was issued diminishing the number of the electoral college or corporation of a Commune, limiting the sphere of its functions, and also exercising a direct control over the choice of the functionaries. (3) The crown came to exercise a supervision over their conduct in the discharge of their functions. Now, through these encroachments of the royal power on the rights of the Communes, these rights were one by one extinguished, with the exception of some few which afforded the citizens no opportunity to exercise ability, or no stimulus for ambition. It is true that the free cities had gained privileges which might have threatened the breaking up of France into a number of petty oligarchies, similar to the republics of Italy, and which might have become equally dangerous with the oligarchies of feudalism. Gradually, however, these powers and privileges were destroyed by that royal ally by whose aid they had been gained.

In reviewing the history of the French Com-

munes, we cannot fail to notice its similarity with the history of the old Roman municipia. In the third century these had enjoyed rights very similar to those gained by the Communes in France, but gradually these rights had been encroached on, and ultimately destroyed by the power of the emperors, just as some eight or nine centuries later, the rights of the Communes in France were subverted by the crown. If we contrast the state of the French Communes with that of the free towns of Germany, especially those of the Hanseatic or the Rhenish League, we find that these enjoyed greater rights, and exerted a more extended influence. It is not difficult to account for this. The Communes in France remained too isolated, while the free towns of Germany formed leagues, which by their united efforts, warded off any attempt to interfere with their rights. How far the influence of these leagues extended it is difficult to say.<sup>1</sup> Otto I. granted to several other towns the privileges which the Burghers of these leaguered towns enjoyed. Certainly the towns of North Germany, at a very early period,

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1. Gross in his very valuable work, *The Gild Merchant*, Vol. I, app. E. gives a table of the affiliated towns of North Germany, and he attributes to this affiliation the formation of the Hanseatic league. I am inclined to reverse this view and think that this affiliation was rather due to the league. The affiliation took place apparently in the 13th century. I hesitate, however, to dissent from the views of so high an authority.

formed Gilds,<sup>1</sup> while those of the south had corporations (Zünfte), and in both these cases they certainly exercised a large measure of independent municipal jurisdiction. But further, there never was in Germany such a centralization of power, as was gained by the French crown. The result was that in Germany, as in the case of the Leagues before the end of the thirteenth century, representatives from these towns were in all respects associated with the princes and the electors in the diets of the Empire. They thus exercised, not merely municipal rights, but poli-

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1. A history of Western Europe by James Harvey Robinson, Profesor of History at Columbia college, New York, has just come into my hands, in which the author, pp. 241-500-555, speaks of the Gilds in France as if they existed there just as commonly as they did in England, or in the Flemish cities, or in those of north Germany. The nearest approach, in France, to the English, Flemish, or German Gild is that of the merchants of the Seine commonly called *Aquae Mercatores*. But Charlemagne, in a capitulare of 779 expressly forbade the formation of Gilds, and this proscription was repeated on several subsequent occasions, as by Carloman in 884, *Leges ed. Pertz* (Baluze places this edict in 882, Walter in 883). Hincmar strongly opposed them and subsequently the Gallican church condemned them. There were, however, Fraternities in France which were of two kinds, Charitable Fraternities formed usually in connection with the churches, and Social or rather Convivial Fraternities. Of this last kind were such Fraternities as that of the Butchers and Candlemakers. But these can scarcely be classed as Gilds in the more dignified use of the term. Brentano evidently confuses the Gild with the Commune, arising no doubt from his insisting on the close connection of the members of the English Gild with the municipal government of the borough, which only existed in some cases.

tical also. We find the same state of things in England, in Spain and in Italy. The English Boroughs were, even in Anglo-Saxon times, represented in the local courts, and in the thirteenth century sent their representatives to parliament, so that at no time in English history could it be said that the interests and sympathies, or the work of the citizens of the Boroughs were restricted to municipal affairs.

## LECTURE XXI.<sup>1</sup>

### THE INFLUENCE OF THE CRUSADES ON EUROPE.

In my last lectures I gave you the history of the French Communes, of their strong struggles for enfranchisement, of the influence which they exerted against feudalism, and of their final subjection to the crown. I shall now seek to trace the anti-feudal influence of the Crusades. Perhaps no event in history is so remarkable as the Crusades; wonderful alike in their origin and in their results. They failed indeed to accomplish their purpose of liberating Christianity in the East from the oppression of the Turks, or of delivering from their hands the places hallowed by the life and death of Christ, for these are still in the hands of the Turks, and the services at the Holy Sepulchre have till very lately been conducted under the surveillance of the

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1. Books consulted.—*Essai sur l'influence des Croisades* par A. H. L. Heeren. *Lectures on the history of France* by Sir James Stephens, lect. VI. *Geschichte der erste Kreuzzug* von H. von Sybel. *The Chronicles of the Crusades* by Richard of Devizes and Geoffry de Vinsauf. *History of the Crusades* by H. Mills. *Histoire des Croisades* par M. Michaud. *Historia Guilielmi de Tyr.* *Regesta Pontificorum Romanorum*, edit. Phillipus Jaffe T.I. *Annales ecclesiastici* edit Caesar Baronius T. XI. *Le Colonie Commerciali nel Medio Evo* di Guglielmo Heyd.

Turkish soldiers. Their effects on Europe were, however, very important and widely extended. They may, for instance, be said to have changed the form and direction of commerce. It was then that Venice rose to importance, and became the Queen of the seas, and that the other Italian republics acquired great wealth and influence. The Crusades also gave life to the spirit of chivalry, and led to that union of the spiritual and temporal orders, which for three centuries continued to be the ruling orders of chivalry. The effect, however, of the Crusades may be principally seen in the remarkable changes which they brought about in the political governments of Europe, (in their influence towards the overthrow of feudalism, and the strengthening of the monarchical power.) The spirit which the Crusades evinced, in a very remarkable degree, was just a form of that enthusiasm, or perhaps I might rather say fanaticism, by which the religious mind is ever and again moved. They were in fact due to the revival of that religious, but also adventurous spirit, which had taken possession of the mind of Western Europe. The feudal society, as a rule, offered very little encouragement to learning, and the people were generally sunk in a state of ignorance and superstition, while there were as yet few signs of that revival of literature and the fine arts, which began to show itself in the thirteenth century.

This is just the state of society in which a fanatical religious movement is likely to have the largest scope, and acquire the greatest influence. During the middle ages, while the several states of Europe were very much separated from one another, and there was even a want of harmony between the members which composed an individual state, there was yet one bond which embraced all, and united them in one domination. This was the Church of Rome. Shortly before the Crusades, there had taken place a great religious movement, which was calculated not only to give the Roman Hierarchy a new form of government, but to arm it with a great temporal influence. The great reformer who was to accomplish this was Hildebrand, who ascended the Papal throne as Gregory VII. He had seen with pain the evils which prevailed in the society of that day, and especially in the church. The great social effort to throw off the oppression of feudalism had scarcely begun, and the independent feudal lords exercised a power which was unrestricted, and was too often marked by oppression and crime. Hildebrand, however, believed that the root of the evil lay in the church itself, and that any reform must begin there. The source of the corruption of the church was in simony, the trafficking in church benefices, which placed all dignities and charges of the church in unworthy hands. To the mind of

Hildebrand the evil of simony was due to the right of lay investiture, and his great object was to remove this right entirely from lay hands and place it wholly in the power of the church, or rather of the head of the church. All right of investiture should then rest with the Pope, with whom was the responsibility, and who, from his elevated position, and reputed sanctity, might be expected to exercise a watchful care against simony in any form. This measure of reform, so radical in its character, was certain to bring the church into collision with the secular powers of the several states. These were not likely readily to relinquish a privilege which they had long enjoyed. To annul this right of investiture was to withdraw the clergy from vassalage, thus very materially limiting the territorial rights of the feudal lords, and diminishing the sources of their revenue. Gregory did not live to fully formulate his scheme, and it was left to Urban II. to carry out the purposes of his predecessor and master, and to separate the power of the church from the secular control of the princes. At the Council of Clairmont, it was expressly laid down that no ecclesiastic should hold the fief of a lay lord, or do homage, or swear fealty.<sup>1</sup> The other purpose of Gregory was to insist on the celibacy of the clergy.) A

1. Ne episcopus vel sacerdos regi vel alicui laico in manibus ligiam fidelitatem faciat. Baronius sub anno 1095.

peculiar sanctity had come to be attached to the continency which was observed in the cloisters, and which had in some degree extended to the cathedral chapters. The evil of concubinage, however, prevailed to an alarming extent, and was destroying, in the respect of all classes, the sanctity of the clergy. To counteract so great an evil, it seemed advisable to formally enjoin on the clergy that they should not marry. The views of Gregory on the subject are expressed very forcibly in his numerous letters, in which he insisted that the marriage of the clergy was simply fornication. He further held that the isolation which the life of celibacy implied, would remove clerics from those family complications which, especially in the case of the higher orders, were a constant source of difficulty.

If the annulling of lay investitures rendered the church independent of the state, the celibacy of the clergy might serve to consolidate this independence. The measures, and indeed the character, of Hildebrand must be judged by the prevailing views of his own age, and not by the more advanced ideas of the present. If, however, we may judge his measure by the results which they produced, we see that he moulded, by the energy of his will, the institutions and the habits of the church to his own purposes. For the despotism of the secular powers, he substitu-

ted a despotism still more galling, and one which in time became the most debasing under which Europe has ever groaned. He founded a tyranny not less odious than that which he arrested. He destroyed imperial supremacy by establishing the spiritual despotism of Rome. He found the Papacy elective by the Roman people and clergy, subject to the veto of the Emperor; he transferred it to an electoral college composed of Papal nominees. He sought to reform the glaring abuses of his age, and for a time he was no doubt partially successful, but the very means by which he sought to obviate those evils served ultimately to stimulate them, till they stained the purity of the Papacy itself. It is not my purpose to give any details of the war of investitures. (My reason for this brief allusion to the subject is to point out the relation of the reform measures of Gregory to the beginning of the Crusades.

In order to accomplish his purposes it was necessary to excite a spirit of enthusiasm throughout Europe. If the people, and not less the clergy themselves, were to be raised out of that degradation to which they had undoubtedly sunk, it could only be by infusing a new religious zeal.) The evils were too great to be condoned; they must be met and combated; and for this purpose it was necessary to impart higher views of Christianity, and of the purity

of the Christian life. Missionaries were sent throughout Europe inflaming the minds of the people with purer views of religion. But Gregory also proposed the plan of forming a great European confederacy for the purpose of reconquering the Holy Land from the Saracens, and planting the cross in Jerusalem. He wrote to the Emperor that he was himself prepared to lead in such a great object.<sup>1</sup> He gathered an army of 50,000 men for this purpose; but the time was not yet ripe for so great an enterprise, and it was not till twenty years after that Peter the Hermit succeeded in rousing Europe to enter on the first Crusade. (Gregory may also have hoped that the project of the Crusades would divert the minds of the princes from the encroachments which he was making on their rights.) If this was a motive, it was only partially gratified, for none of the princes of Europe identified themselves with the earlier movement, none took part in the first Crusade. Doubtless the Crusades, which lasted over two centuries, served to protract the war of investitures, which extended over the same period. When at length the religious enthusiasm became

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1. Significat, Italicorum et ultramontanorum jam amplius quinquaginta milia parata esse, se duce Christianis transmarinis opem contra paganos ferre; si hoc Deus me permiserit incipere, a te quero consilium, et, ut tibi placet, auxilium; quia si illuc ivero, post Deum tibi Romanam ecclesiam relinquo, ut eam custodias. Jaffe, *Regesta Pontificorum Romanorum*, T.I. p. 609.

general, and Urban II. at the Council of Clairemont, in 1095, issued the exhortation, or rather command, to take up the Cross, the summons was re-echoed from one extremity of Europe to the other, and all classes joined the Crusades. Monks exchanged their cowls for coats of mail, aged men pressed forward in hopes of at least laying their bones in the Holy city, and even some ladies of high rank joined the sacred armament. So ardent was the enthusiasm that a contemporary declares that "it would have been easier to count the leaves of the forest, the sands of the sea, or the stars of the firmament, than to count the Crusaders who rolled like a strong tide to the east." No doubt in taking up the cross, many of the Crusaders were largely actuated by worldly motives. The Crusader received a plenary indulgence for all his sins and shortcomings. (His debts ceased to bear interest from the time of his departure, and he was authorized to postpone, till the lapse of three years, the full payment of any debt which might be fully due. He was also exempted from the payment of taxes, and he might insist on his parents supplying his wants to the tenth of their income.) These were strong inducements to a necessitous multitude to abandon their homes, when they were at the same time associated with hopes of receiving a part of the rich spoils, which were promised as the result of certain success.

(Our especial purpose, however, at present is to show the tendency of the Crusades to abridge the power of feudalism, and we notice in the first place, that they diminished the number of serfs attached to the various seigneuries throughout France. We have already mentioned that serfdom was an inseparable part of feudalism. As the land so the serf who cultivated it was a part of the seigneurial property, which could not be alienated except under peculiar circumstances. An ecclesiastical seigneur could not manumit his serf, because the property which he held, he held merely in usufruct—not of his own right so much as for the church, and a Canon law prohibited any alienation of such property. In like manner, a lay seigneur was unable to enfranchise his serfs without the consent of some other lords who might have any interest mediate or immediate in the fief to which the serf belonged. But the Crusades introduced a new law, or at least a new custom of enfranchisement. According to the old Roman practice, which continued to be observed, the servile and military conditions were regarded as incompatible, especially in the case of a *Miles Dei*, or soldier of the Cross, and on this principle (a serf who joined the standard of the Cross became free.) The murmurs of the seigneur, and the claims of the seigneury were silenced by this form of enfran-

chisement, and though there was no express law which forbade the lord re-claiming his serf on his return from the Crusades, yet a tacit law was found in the universal sentiment of society, and neither the common feeling of mankind, nor the devotion of religion, would have permitted the degradation to his former menial position of one who had been a soldier of the Cross. But there were also very many who, in the general excitement and confusion which took place in the filling of the Crusading armies, embraced the opportunity of leaving the fief to which they were attached, and becoming fugitives to the Communes, and never left for the Crusades. (The gates of the Communes were always open to receive such fugitives, and a law existed which gave liberty to anyone who had passed a year and a day within a Commune.

The tendency was, in this way, to constantly augment the roll of the citizens of the Communes at the expense of the seigneurs and their fiefs.

It was thus one of the results of the Crusades, both directly and indirectly, to abridge the supply of rural labourers, and consequently the wealth and power of the feudal lords. But the seigneurs also found it necessary in many cases to manumit their serfs, and to hold out to them inducements to remain on their estates, by giving them an interest in the land which they cultivated.

By these three forms of the enfranchisement of serfs the feudal system was largely affected; the power of the feudal lords was much diminished, and the Communes, where many of these serfs found refuge, and became useful citizens, were proportionately benefitted.

Secondly—The Crusades also tended to increase the wealth and the strength of the Communes. The nobles who assumed the Cross, and bound themselves to march to the Holy Land, soon perceived that large sums of money were necessary to form the equipment, and to defray the expenses of such a distant expedition, and this with suitable dignity at the head of their vassals. But feudalism put out of their power to raise money by the imposition of extraordinary taxes, and no expedient was left but the sale or mortgaging of the whole or part of their estates. (To the Crusader the loss of his estates might not appear very great, since his hopes were inflamed by the expectation of splendid conquests in the East.) Indeed almost all were disposed to part with their titles, their rights, and their seigneuries, but it was not easy to find purchasers. The Crusaders naturally turned to the crown, but the royal treasury was empty, and the reigning kings were too indolent, and too voluptuous, to pay a price for what they did not value, or to sacrifice the good cheer of the palace, or their own private indulgence, in order

to augment the domains or the prerogatives of the crown, and the seigneurs were obliged to look elsewhere. Thus Robert of Normandy mortgaged his dukedom of Normandy; one of the finest possessions in France, for it had come to include Maine and Anjou, besides other smaller fiefs, to his brother, William Rufus, for ten thousand marks of silver.<sup>1</sup>

The vassals of the second order (Sub feudatores) sometimes bought the estates of the larger seigneurs, in many cases their own suzerain. But the more frequent purchasers and generally the more inimical to the feudal system, were either the religious houses, the wealthy citizens of the Communes, or the corporation of the Commune itself. Godfrey de Bouillon mortgaged his castle and fief of Bouillon for 7,000 silver marks to the Bishop of Liege, and the Counts of Foix and of Hainault sold their seigneuries to the same bishop. But the Communes, or the individual citizens, were the largest purchasers. Such Communes as were already enfranchised were fast becoming the great emporia of commercial enterprise and capital in France, and they now reaped the advantage of the enormous and fictitious demand for money which the Crusades created. We can scarcely estimate the effect in that uncommercial age, of the simultaneous de-

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1. The silver mark was worth about 13/6 sterling.

mand for money in every part of Europe by tens of thousands of persons engaged in equipping themselves and their followers for the Holy wars. Many of the French seigneurs parted with their only means of subsistence, their lands, their castles, and their chattels, and in the general excitement, the calm and wealthy Burghers made their purchases. In this way many of the finest fiefs in France passed into the hands of new men (*les nouveaux riches*), who had no title but what their industry and good fortune had given them. We can easily imagine what an important change would thus be brought about in feudal society. (But we may further remark that in the preparation and equipment of the Crusaders, a large proportion of the money paid for the fiefs, naturally passed back into the pockets of the merchants.) In relation to such fiefs as were purchased by wealthy citizens, there was a law existing which established the principle that no roturier could acquire, or hold a fief, or claim the title attached to it. This presented a difficulty which was only solved at a period shortly subsequent, under Phillip Augustus, who issued an ordinance that the royal investiture of any man with a fief, raised him from the position of a roturier to that of a noble. No more effective blow could have been aimed at the exclusiveness of feudalism. To the great scandal of those whose ancestors had distinguished

themselves at Tours, or at Roncevalles, there appeared a new class of lords, and goldsmiths, mercers and vintners, who still continued to follow their lucrative trade in the cities, yet held in many instances, some of the finest fiefs in France, preferring the profits of exchange, or the pleasures of a civic banquet, to the unwonted solitude and the hazardous duties of a chatelain. But we mentioned in a previous lecture that in case of the death of a feudal lord without heirs, the fief reverted to the crown. Now many of the French nobles perished in the Crusades, without leaving any heirs, and in such cases the king took possession of the fief, which went to increase the royal domains.

3 Thirdly—The Crusades, more than any other cause, laid the foundation of those commercial enterprises, which have done so much to increase the wealth of the mercantile classes, and to develop the spirit of liberty in Europe. Before this period two routes had formed the means of communication between Europe and Asia. The one, the more northern, passed by the Caspian sea, the Don, and the Volga, the other by Suez, Cairo, and Alexandria. Constantinople and Alexandria, with other cities along these routes, became the repositories of eastern merchandise. (The conquest and temporary holding of these great marts by the Crusaders gave them also a taste for luxuries which they had not before known.)

Many, forgetting the object of their expedition, and their solemn vow to rescue the Holy Sepulchre, turned their attention to commerce and, in the guise of Oriental merchants, explored new routes to Golconda and Cashmire, and trafficked in rich eastern wares. Returning to their homes, they sought to establish new entrepôts of commerce, rivals of Constantinople and Alexandria. It was now that so many of the republics of Italy received an impulse in commercial enterprise, and that Venice, Genoa, Pisa, and Amalfi, with many other cities in the interior, rose into importance and acquired great wealth. France shared in this great commercial movement, and, either by force of arms, or by purchase, many of her nobles and monied citizens acquired extensive settlements in the East, and while these settlements gratified the pride of some count or duke, who became the nominal prince, they also promoted mercantile speculation, and opened up new sources of wealth to the French middle class. For the first time, France became a maritime power. Phillip Augustus encouraged these new efforts of commerce, and under his direction, shipwrights studied the arts of naval architecture and of navigation. The French became shipbuilders on their own account, and were no longer wholly indebted to Pisa and Genoa for ships to carry on their distant commercial enter-

prises, and Marseilles became the rival of the Italian cities. But not Italy and France alone felt the impulse, for Germany, Flanders, and even England, were influenced by it to a greater or less extent. It was now that the Hanseatic towns, as well as the towns of the Rhenish League, rose into greater importance. Now too the towns of Flanders, such as Antwerp, Bruges and Ghent, acquired great wealth through manufactures and trade, and became the great emporia for linen and woollen goods, and for naval stores. England also, at this time, opened up trade with the continent, and began those great commercial enterprises which have since placed her in the highest rank of commercial nations. But commerce is the natural hand maid of liberty, and was wholly opposed to the despotic spirit of feudalism. The merchant was at all times the successful antagonist of the seigneur. Before his enlightened spirit of enterprise seigneurial privileges were gradually and surely encroached on. The merchants acquired increased Communal liberties, and formed commercial Fraternities, while they acquired estates, of which the king generally granted them letters patent, thus drawing them to allegiance and fidelity to himself, and removing them from the influence of the feudal lords.<sup>1</sup>

④ Fourth—The Crusades changed the whole military system of Europe, and thus tended to

impair the power of the feudal chiefs. The structure of feudal armies was essentially defensive. They were unfit for foreign service, or for any prolonged military operations. As a general rule a seigneur could only claim from his retainer in the field, a service of forty days. In the Crusades, however, it was impossible to adhere to any such limitation of time. The leaders of these expeditions received, or in many instances claimed, the submission of their followers for indefinite periods, and this ripened, on the one hand, into the right to exact, and on the other into the obligation to render similar services on all future occasions.

But further, in order to the safe conduct of so vast an enterprise as the Crusades, it was essentially necessary that there should be unity of command and prompt obedience of all inferior officers to the leader of the host. Feudal lords were obliged to bury their prejudices, their pride, and in a sense their dignity, and to accord to one the supreme command of the army. This became the rule on all similar occasions, and large masses of armed men were henceforward, under the guidance of one, moved to distant enterprises. But the necessity of providing supplies, and conveyances, for large bodies of men entailed the services of the several military departments, which have ever since been considered essential in the conduct of a war. The Com-

missariat department to provide the requisite supplies of food and clothing. The quartermaster-general's department, to superintend the execution of the movements which the leader may direct. The Ordinance department, to furnish and take charge of the weapons and ammunitions of war. The Engineer's department, to overcome the natural difficulties which may impede the progress of an advancing army. Feudalism, so limited in its operations, required none of these, but a change became necessary, when a large army had to be transported to a distant campaign, and through countries which were by no means always friendly. But, in considering the transportation of these Crusading armies, it will be apparent that it was absolutely impossible to transport all the paraphernalia which formed the equipment of a feudal chieftain, and his feudal band. The Grand Seigneur, who in all his achievements at home, had been accompanied by his Knight, his Esquire, and his Chronicler, and who bestrode his well-bred and well-managed steed, clad like himself in armour, now realized that horses would be encumbrances in the transports of that day, while he found too that he would have to encounter horsemen even better mounted and more skilled in the management of their steeds than he was himself. The seigneur and his knight learnt, to their great surprise, that they could be more

efficient on foot to resist an attack of cavalry, than had they been mounted. From this time, the infantry rose in estimation, and the wide chasm which had once separated the mounted cavalier from his humble retainer was in a large measure bridged over. Now all these circumstances affected the position of the feudal lord, and tended to break down that distinct, though unnatural, separation, which divided the lord from the roturier.

It may not be out of place to remark in this connection that the Crusades tended also to put a stop to the many petty feudal wars which had existed between neighbouring seigneurs, and which had not only destroyed any harmony among the seigneurs, but were detrimental to any development of a healthy social life. Less isolated than formerly, and less antagonistic, they turned their attention to the improvement of their estates. There had been very little comfort in the old feudal life. The castles of the great seigneurs had been little better than towers, or even dungeons, built for protection against some warlike neighbour, and very little adapted to the higher, purer, and more reasonable pleasures of social intercourse. Those who had gone on a crusade had been introduced to a life, essentially different from that which they and their ancestors had lived. In the various cities of the East, which had served

as the rendezvous, they had been associated with a refinement and a luxury of which previously they had no conception. Those who survived the dangers of those distant enterprises returned with new ideas of life and life's enjoyment. The castles gave place to chateaux built in new and graceful styles of architecture, such as adorn Western Europe, and especially France, at the present day. The seigneur's table was no longer formed of rude boards on trestles, but of rich woods, chastely sculptured, and at which he, and his family and frequent guests sat, not on benches rudely constructed, but on chairs richly embossed. But this new and wonderful impulse was communicated to every phase of life, and showed itself in the embellishment of the churches, as well as in the improvement of the sacred services. The village church had been generally a large, rude building, which served for varied, and not only religious purposes. It sometimes served as a school house, and a place where all public assemblies met. It was also at once a church and a town hall or a hotel de ville, and in case of an invasion of wandering bands it became a fortress, where the citizens betook themselves. There justice was administered, and there too the villagers fought, and often killed one another. Occasionally it served for a dancing hall, where the village dances were held, while part was adapted for a

general granary. Henceforward bishop and priest, baron and bourgeois, alike, turned their attention to the erection of more beautiful churches, and the adornment of the cathedrals, such as we see in the fine facade of Notre Dame at Paris, or of the cathedral at Cologne, or of the Church of Notre Dame at Poitiers, or in the marvellous stone lace work of the portal of the cathedral at Rheims, or of the open work of the cathedral at Strasburg, or of Freiburg. The interior of the churches too were not neglected. The stalls and chairs at Amiens, at Rouen, and at Chartres present some of the finest examples of sculptured ornamentation, while the Rood screen or Reredos separating the chancel in very many of the churches remain unsurpassed in their elaborate yet chaste architecture. England scarcely comes behind France or Germany in the beauty of her old cathedrals, but perhaps excelled in her monasteries, as may be seen in the remains of Newton Abbey, near Southampton. The church services were also very much improved, while the church missals and other manuscripts, were ornamented by illuminations, the style of which was copied from the East. It is a remarkable fact, however, that none of the returning Crusaders copied the Greek or more eastern style of architecture. In the new chateaux, in the churches, in the abbeys and in the town halls, the Gothic was almost invariably

adopted. There is something in the Gothic which seems well adapted for church architecture, something so chaste and elevated, that we cannot see without regret, both in Canada and in the United States, the erection of churches of the most objectionable style, a combination of the ruder style of the town hall and the barn, a style most repulsive in its character, most offensive to the cultured eye, and presenting no redeeming feature.

I would not, however, be understood as attributing this improvement in the modes of social life, in art, and architecture entirely to the Crusades. The enfranchisement of so many of the towns, the increasing wealth of the citizens, the wider dissemination of education, all contributed to the general movement, yet we cannot fail to note that it was in the two centuries covered by the Crusades that this development took place. After that period there was a too evident decline in the style of architecture, it lost its chasteness and its elegance, till we have reached the coarse and commonplace architecture of the present day.

(5) Fifth—With the last division there is closely connected the peculiar relations of the military and religious orders whose formation was almost entirely due to the Crusades. The Christian cavalier filled with the hope of the conquest of the Holy land, and yet entering on the enterprise

with the assumed devotion of a martyr, attached himself to one or other of those great spiritual brotherhoods which pledged themselves, in their religious ceremonial, to do battle to the death against the infidel, and became a Knight Companion of St. John of Jerusalem, of the Hospitalers, of the Templars, or of the Teutonic order. But at the close of the Crusade these devoted champions of the cross formed for the rulers in Europe, and especially for the king of France, a new and powerful militia which he was often able to turn to good account, and which in many ways served to augment his power over the feudal barons, and to render him independent of their assistance. How effectively their work was carried on during the Crusades, and even later, the histories of Rhodes and Malta bear full evidence. After their return from the Crusades, the Templars became so important and so wealthy a body, and exercised so great an influence, that Phillip Le Bel became jealous of them and resolved on repressing the order. Through continued intrigues, he succeeded in gaining possession of their property in France, and on sundry charges against them, he commenced a persecution in which very many of them perished. Edward III. also attacked the Templars, but not with the same rigour as in France, though in England too their property was confiscated.

⑥ Sixth—The Crusades tended to increase the power, the wealth, and influence of the Papacy, and called into existence the mendicant orders. It was principally through the Crusades that these mendicant orders sprang into existence. (The two most important of these orders were the Dominicans and the Franciscans, followed at a later period by the Augustines and the Carmelites.) The more ancient monastic orders, such as the Benedictine and Cistercian, had by donations and other means acquired immense riches, and by their ostentatious use of these, had forfeited the respect of the public. The more austere principles, and the rigid obligation to poverty, enjoined and for some time faithfully observed by the mendicant friars, commended them to the laity, and especially to the lower classes, whose opinions of religious zeal and sincerity depend very much on the disinterestedness and self-denial of their pastors.

The progress of these orders during the eleventh and twelfth centuries was very remarkable. Recruited, for the most part, from the lower classes of society, they had of course the entire sympathy of those classes, and so great became their popularity, that the churches were neglected, for the people flocked to hear the orations of the friars who preached at the street corners, and dispensed the Sacrament from a portable altar. Aware of the powerful

support which the church might derive from these itinerant friars, the Pontiffs granted them very extensive privileges. They were exempted from episcopal authority, and they were permitted to preach and hear confession, without the leave of the Ordinary. They might accept legacies, and they could enter in the churches. These privileges were granted in spite of the remonstrances of the bishops and strong opposition of the University of Paris. It was only natural that such benefits should meet with some return from the mendicant friars. They formed a kind of Papal army upholding the Papal supremacy, and were to be found in the most remote corners of Western Europe, declaring the authority and the principles of the Holy see. (The democratic spirit of these orders was opposed to the principles of feudalism, and acting under the shield of the Papacy, they used their influence against the feudal lords.)

Seventh—The Crusades tended to change the administration of justice. The court of the seigneur had, up to this time, been held by himself or a representative of his own appointing, but during the Crusades the feudal courts fell into desuetude, partly owing to the absence of the lord himself, or of a large number of his vassals, but partly also because many of the fiefs had lapsed to the crown while others had become the property of a Commune, or of a

wealthy burgher, who as a rule preferred municipal jurisdiction to feudal privileges. Both in France and in England the ousting of the Baronial courts was at that time very general, and Royal or Communal courts supplied their place. But further, the presence of the lord and his vassals in the east, and especially during their stay at Constantinople, made them acquainted with the forms and working of the old Roman jurisprudence as presented in the Pandects of Justinian. Law schools had been established sometime before at Bologna, Padua, and other Italian cities, and lawyers, instructed in the legal learning of these schools, were to be found all over Europe, and the result was the very general substitution of courts of justice in place of the arbitrary tribunals of feudalism. The spirit of liberty, the general progress of which we have sought to trace, brought about a stronger sense of right and justice, and this, it was soon perceived, could only be administered by a common standard, and not according to the caprice of a feudal lord, who was quite unacquainted with the principles of justice and unlearned, as well as unaccustomed to weigh evidence, and decide on such evidence a righteous judgment. But the lessening, if not the deprivation, of the power of the feudal courts would certainly very greatly diminish the power and prestige of feudalism.

Eighth—The Crusades were the means of opening to the western world something of the wisdom of the east. They diffused over Western Europe that intellectual light which was so fatal to the darkness in which feudalism had its origin, and which seemed so essential to its maintenance. Greece had been the great centre of intellectual life in the old world, and though in the middle ages she degenerated, and her intellectual vigour had failed, or had been diverted to other sources, still the Greece of the Crusades might assert her hereditary title to literary honour. The Saracens, brought in contact with Greek learning, had made use of their opportunities, and had established at Cairo, Alexandria, Tunis, and several other cities, schools where Greek learning and Greek philosophy were principally taught. The Crusaders, lingering at Constantinople, or Athens, at Alexandria or Cairo, or at other cities in Asia Minor or Syria, imbibed something of the prevailing passion for learning and carried home with them, on their return from the east, some of the literary treasures of Greece. Up to this time almost the only mode of acquiring learning was by travels in foreign countries, or through personal intercourse with learned men, a very difficult matter when communication was both tardy and dangerous. Now, however, much of the learning of the east was introduced into the west. Libra-

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ries were established, universities were founded, and learning was made accessible to all who chose to seek it. The morals, the logic, the politics, and the physics, of Aristotle, took possession of the schools, especially of the schools of Paris, and though the works of Aristotle were at first declared heretical by an ecclesiastical council, yet before long they were largely studied, and St. Thomas Aquinas devoted five volumes to the reconciliation of the doctrines of the Stagyrte with those of the Gospel.)

Under feudalism, not merely the lower classes, but quite as much the higher, had remained deplorably ignorant. They knew little of the great periods of history, and as little of science or geography. But the travels of the Crusaders revealed a new world to them. Till then the political and military events of the past had been chronicled exclusively by monks, most of whom were as credulous as they were ignorant. Now French Knights and knightly chroniclers became the successful rivals of the monks. Prompted by religion and by patriotism, they were eager to record, for the information of future ages, the actions in which they had themselves shared, or which they had witnessed. For the information and guidance of future Crusaders, maps of the coasts of the eastern seas, and of the islands of the Mediterranean, were prepared, and missionaries of the Cross were sent

by the western church to lands hitherto unknown, and which the vaguest myth and legend had enveloped in uncertain light. But every new ray of light which penetrated the darkness of feudalism, discovered its weakness and the instability of that power on which the seigneur relied, while it revealed to the serf and the vassal, the means by which they might obtain and secure their freedom.

It would seem that feudalism was the natural result of the circumstances out of which it grew, and it had apparently its place to fill in the early history of nations, and that, in the weakness of the central power, it was necessary, in order to keep in check the forces which made for anarchy and confusion. But, under any form, feudalism was an evil, it was subversive of the nobler features of our nature, it did nothing to elevate the moral or intellectual character, and contained within itself the elements of dissolution. It could not long have stood in the way of an advancing civilization, though it might have, for an almost indefinite period, retarded its progress. (The Crusades, however, guilty and wasteful as they were, seem almost to have had a direct purpose to fulfill, and perhaps not the least important was that of bringing to a close the feudal system earlier than this would otherwise have been accomplished, for though the Crusades failed in their purpose

of wresting the holy places from the Ottoman Turks, yet they very materially effected the general course of European history. They had in a degree strengthened the royal power, as also the power of the Communes, while they contributed to extend the power of the Papacy.)

## LECTURE XXII.<sup>1</sup>

### ADDITIONS MADE TO THE ROYAL DOMAIN THROUGH THE ALBIGENSIAN CRUSADES AND ACQUISITION OF NORMANDY.

I have pointed out to you that through the rise of the Communes in France, and through the influence of the eastern Crusades, the power of feudalism had been very much lessened, while on the other hand, the prestige and power of the crown had been increased. The towns had acquired an importance which their subjection to the crown had not destroyed, though it may have in some degree diminished. It shall now be my duty to show you how the power of the crown was augmented through the acquisition of territory. You will remember that at the accession of Hugh Capet, the domain which he held was that which he had brought to the crown as

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1. Books consulted.—*Histoire des Français* par J.C.L.S. Sismondi T. 5-6. *Histoire de France* par M. Michelet. *Histoire de France* par Ernest Lavisse. T. II. pt 2. III. par A. Luchaire. Phillip II, August von Dr. Alex. Cartellieri B. I. *Histoire des Institutions Monarchiques de la France sous les Premiers Capitiens* par A. Luchaire. *Vie de Philippe Auguste* par Rigord. *Vie de Philippe Auguste* par Guillaume le Breton, tr. par M. Guizot dans le collection des *memoires*. *Histoire de Philippe Auguste* par M. Capefigue.

Count of Paris. It was not royal domain in the proper sense of the term, for it was private possession, and any further acquisition of territory would be held on the same tenure. This condition of the royal fief continued to the close of the reign of Louis VII. Some estates had undoubtedly fallen to the crown through the death of the seigneurs in the Crusades, leaving no heirs, when the estates were escheated. These changes, however, were to a limited extent, and it was not till the reign of Phillip Augustus, that any important additions were made to the primitive patrimony of the Capetians. Indeed his reign marks a distinct change, both in regard to the additions which were made to the Capetian estates, and also in the financial and judicial administration. It begins a new chapter in the history of France. The first four kings of the Capetian line, Hugh Capet, his son Robert, Henry I. and Phillip I., were men of ability, but in the disorder into which the kingdom had fallen, and the independent power of the feudal lords, they succeeded in accomplishing very little. They secured the possession of the crown but did little more. Not only the greater seigneurs disputed their authority, but even the lesser barons of their own duchy of France, were by no means subordinate, and it was necessary to bring them to obedience before it was possible to establish order in the kingdom. This was the

object which Louis VI. principally had in view on his accession. Many of the seigneurs, whether in union or separately, long contested his projects, and it was not before he had succeeded in destroying their castles that he could reduce them to subjection. In the carrying out of his purposes he was aided by the towns of his duchy that had gained their freedom. When he had brought his own duchy under his rule he sought to extend his power over the kingdom, and at length succeeded in establishing his jurisdiction over Flanders, Vermandois, and later, over Auvergne and other counties. The vigour and the justice of Louis' administration made him the refuge of the feeble, and many of the bishops sought his support against the aggression of the lay feudal lords, and by commendation placed their ecclesiastical fiefs under his protection. Several instances of this also occurred under Louis VII. as we learn from the interesting collection of Regesta made by M. Luchaire.<sup>1</sup> During his reign of twenty-nine years Louis VI. succeeded in elevating the throne over the feudal lords and establishing a kind of judicial authority, with the right of demanding military service. His son, Louis VII., applied to the enfranchised towns and to the fiefs the same system as his father, and served still more

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1. *Les Etudes sur les actes de Louis VII par M. Luchaire.*

to confirm the Capetian dynasty on the throne, and in the augmentation of its sovereign power. Phillip II. or Augustus carried much further the work which his father and grandfather had begun. Shortly after his accession the three very important counties of Champagne, of Flanders, and Burgundy, were held by regent countesses as tutelles for the minor heirs, and Phillip took the advantage which this position of affairs gave him, and made these several countesses the executors of his will. Each became surety for the heir, that so soon as he should attain his majority, and should enter into possession of his fief, he should do homage and fealty, and swear devotion to Phillip as his grand suzerain. The kingdom of Arles, which had been a part of Burgundy, but had acquired the dignity of a small independent kingdom, entered into closer relations with Phillip. Phillip also renewed the charter of the Communes, and encouraged them in their efforts for the development of industry and commerce, while he extended the privileges of the society of the Merchants of Paris. In this way the royal power gradually acquired judicial authority over France, and brought the feudal lord to acknowledge its suzerainté. Still its power must continue to be limited so long as the territorial possessions of the crown were confined to little more than the Duchy of France. The feudal lords were certain to always offer an

obstacle until, through the consolidation of his conquests, the king was sufficiently powerful to enforce his commands, and to exercise his full jurisdiction. It must therefore be our next consideration to show the gradual extension of the domains of the crown, and we shall in the first place trace the history of the Albigensian Crusades by which the whole of the south of France was added to the royal domain.

In the eleventh and twelfth centuries the whole of the south of France was held by a number of feudal lords who did fealty to the king of Aragon, and not to the king of France. The counties of Provence, Foucalquier, Narbonne, Beziers, and Carcassone all belonged to him, while the counts of Bearne, of Armagnac, of Bigorre, of Comminges, of Foix, of Roussillon, and Montpellier, in a less degree acknowledged his suzerainty, and the powerful Count of Toulouse with difficulty maintained his independence. These extensive counties were comprehended in the department of Provence, using that name as applicable to the old *Romana Provincia*. This country is sometimes called *Langued'oc* from the more flexible speech of the people in contradistinction to the language of the north of France, the *Langued'oïl*. Provence or *Languedoc*, which was in fealty to the Duke of Aragon, was inhabited by a race of men industrious, spirituel, given to commerce and the arts, and

still more to poetry. The towns of this district, maintaining their municipal rights, for the most part, from Roman times, had acquired wealth, and were adorned with the remains of Roman art. It is the land of feasting and gallantry, the home of chivalry and the troubadours, and each of its towns was the seat of a princely and luxurious court. But while merriment and gaiety found a natural home in Provence, the lovely valleys of that happy land were occupied by a people who, it is said, had at an early period received the teaching of Peter Waldo, the founder of the Waldenses,<sup>1</sup> and with the freedom of thought which was then beginning to prevail, there was no place where its development was more marked than in Provence. The Church of Rome has always regarded intellectual development with some anxiety, and Innocent III. saw with dissatisfaction the progress of the Provinciaux in intellectual and religious freedom. And in 1207 Innocent sent a legate, Peter of Castelnau, to take measures for its suppression. Castelnau ignorant, impulsive, and tyrannical, called on Raymond, Count of Toulouse, the sixth of that name, to exterminate his heretical subjects with fire and sword. But dissatisfied with Raymond's want of zeal in the discharge of this atrocious office, Castelnau excommunicated him, and laid

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1. There is much doubt about the particular religious views of the Albigenses.

his territories under interdict. This was not only sanctioned but confirmed by the Pope, who now further resolved on carrying to extremes the persecution against the Provincaux, a quiet and inoffensive people who had committed no other crime than that they had separated themselves from the blind orthodoxy of the church. Innocent wrote to Phillip Augustus exhorting him to make war on the heretical enemies of God and the church, promising him all the indulgences which had been promised to the Crusaders to the East, as well as the confiscation of all the property of the heretics. He addressed a similar appeal to all the counts, barons and knights, faithful and true, of the kingdom of France. Raymond, driven to extremities by these measures, and by the insolent manner of the legate, in an unguarded moment threatened Castelnau that he would pay for his insolence with his life. A vassal, who was present at the interview, noted the threat, and being himself shortly after stung by the overbearing manner of the legate to himself, drew his sword and struck the legate dead. The church saw in the murdered legate only a martyr slain for the cause of God and the church, just as in the similar case of Thomas A'Beckett. But Raymond VI. was not a Henry II., nor Alexander III., an Innocent III. One bull after another issued from the Papal Chancery calling on all church-

men throughout Europe to take up arms against Raymond, and absolving his subjects from their allegiance. To that ignorant and superstitious generation no summons could have been more welcome. Danger, privation, and famine in their direst forms had beset the rugged path of the Crusaders to the east, but in the war against the Albigenses the reward was equally great, was more certain, and was to be won, not by self-denial, but rather by self-indulgence.

From one end of Europe to the other was heard the din of martial preparation. It is said that half a million obeyed the Papal summons, but this is perhaps too high an estimate, and fifty thousand is a more reasonable number. Many of the leading nobles of France, as the Duke of Burgundy, the Counts of Nevers, Auxerre, etc., took up arms, but eminent among the rest, as well for his proved courage, as for his skill in arms, was Simon de Montfort, lord of a fief near Paris, and Earl of Leicester in the English peerage, through his mother, an Anglo-Norman lady the Countess of Leicester.<sup>1</sup> Among

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1. Amicia, the eldest sister and heiress of Robert of Leicester, married Count Simon de Montfort. The English barony was, on her death, divided between the Count of Winchester and the Count de Montfort, but in 1207 during the struggle of John with Phillip Augustus, John confiscated the De Montfort part of the estates of Leicester, and gave it in 1215 to Ranulf of Chester. Simon de Montfort, the the Albigensian Crusader, Amicia's son, therefore, never held the Leicester estates. By the death of Ranulf of Chester in

the ecclesiastical chiefs was St. Dominic with his brother, together with Fouquet, who became Bishop of Toulouse, and Arnaud Amalric, Abbot of Citeux, who, on the murder of Castelnau, had been appointed Papal legate. Raymond dreaded the growing tempest and endeavoured to avert it. He humbled himself before Innocent, and his penitence seemed to be accepted, but he was soon to learn how cruel are the tender mercies of a persecutor. The conditions of his pardon were that he should surrender seven of his best castles as a pledge of his fidelity, that he should submit himself to the future judgment of the Papal legate on the charge of heresy, that he should do public penance for his past offences, and that he should then in his own person take part in the Crusades against his own subjects. Each part of this sentence was fully carried out. The count appeared in the cathedral of St. Giles with naked shoulders, and having around his neck a cord, either end of which was carried by

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1232 that part of the earldom of Leicester appears to have become vacant. Amaury de Montfort, the eldest of Simon's four sons, pleaded with Henry III for the restoration of the Leicester estates to his youngest brother Simon, the second and third brothers, Guido and Robert, having died in the spring of 1238. The De Montforts were pardoned and Simon was put in possession of the English estates of Leicester. He shortly after married Eleanor, the sister of King Henry III and widow of William Marshall, Earl of Pembroke. By this marriage Simon was brought near to the crown, and had Henry died childless Simon's son would have been the nearest heir.

a bishop. By their hands the scourge was laid on his person, not as a merely humiliating ceremony, but with a hearty good will for the task, till, covered with blood, and in an agony of distress and shame, Raymond escaped from his tormentors.

Count Raymond VI., though he had borne arms with some distinction, was of a spirit too feeble and timid to stand against his enemies in the church, and the anathemas of the pope. Raymond Roger, his nephew, Viscount of Alby, Beziers, Carcassone, and Limoux, who had identified himself to a much larger extent with the Albigenses, and was under the same Papal curse as his uncle, was a man full of the impetuosity and zeal of youth, and less willing to yield to the wishes of the Papacy, so that the tide of war was for a time diverted from the uncle to the nephew. One after another his castles were captured or burned, while suspected heretics were thrown to the flames. Beziers and Carcassone were his strongest fortresses, but Beziers fell at the first assault. Pausing at the gates the knights asked Amalric, the Papal legate, how they should distinguish the Catholics from the heretics,—“kill all,” replied the legate, “the Lord will know those that are his.” The injunction was fearfully obeyed. In the great church of St. Nicaise had assembled a large number who hoped to find security in the

sanctuary, but not one survived the carnage. Others sought refuge in the church of the Madeleine, and 7,000 dead bodies were afterwards counted on the spot. The slaughter only ceased for want of victims. Not one human being, of those who before had thronged the marts and the pleasant streets of Beziers, remained alive. When the booty had been carried off, the city was set on fire, and blackened ruins alone remained to tell where it had stood. Carcassone was next besieged. There Raymond Roger commanded in person, but after a vigorous defence, Carcassone also yielded, and Roger fell into the hands of the Crusaders, and was confided to the tender mercies of De Montfort, who took possession of the princely heritage of the Viscount of Beziers. With the fall of Carcassone the curtain dropped on the first act of that frightful drama. Raymond of Toulouse had appealed to Phillip Augustus of France, as well as to Otto IV. of Germany, but without result, and in his weakness and humiliation, he made further overtures to the Pope. In the negotiations which followed, Raymond complained of the conduct of Amalric, who still continued his measures against the country, and the Pope sent a special envoy, in the person of his own secretary, Milo, a man who, if not so openly hostile as Amalric, was even more crafty and deceitful.

But all Raymond's offers of submission did not

stay the preparations for a continuance of the Crusade. De Montfort had been put in possession of the Vicomté of Beziers and Carcassone. Amalric, however, now claimed the bishopric and dukedom of Narbonne, which was included in the Vicomté, insisting that the ducal crown was inseparable from the arch-episcopal mitre. De Montfort refused these claims, and maintained that the feudal dukedom had become a forfeiture to him. The Crusader took possession of the dukedom, and the legate excommunicated the Crusader. The Pope now began to dread the growing power of De Montfort, and in 1215 he convened an oecumenical council in order to bring to an end this Crusade, and finally to dispose of the conquered territories. Raymond and his son, the seventh of that name, appeared before the assembled fathers of the church, recounted the ills which they had suffered at the hands of De Montfort, of Amalric, and of Fouquet, one of those unprincipled and openly immoral men who so often come to the front in troublous times, and who had put to death, it was alleged, ten thousand of his flock. Innocent apparently allowed himself to be moved by the appeal of the two Raymonds and of Peter of Aragon, to whom the two Raymonds, as well as Raymond Roger, were fealty. The other members of the council were apparently touched with a like pity, or was it remorse? The result

was that the younger Raymond received the county of Venaissin, and the Marquisate of Provence, while the Counts of Foix and of Comminges were replaced, provisionally, in possession of their estates, and De Montfort was allowed to claim the counties of Toulouse, of Beziers and of Carcassone, and the dukedom of Narbonne, in which possession he was recognized and invested by Phillip Augustus. De Montfort now stood on his own unaided resources, and the people of Languedoc, who had always been marked by a devoted allegiance to their hereditary princes, and who had abhorred the cruelties of De Montfort and his perfidious servant Fouquet, watched an opportunity to throw off the hated rule of their new master. The citizens of Toulouse raised the standard of revolt, and the people of Languedoc, both nobles and commons, rallied round it. Under the command of the younger Raymond, for the father had died a short time before, they gave battle to De Montfort, who was slain, and Raymond was hailed by Toulouse as the lawful sovereign. But the curtain had not yet fallen on the final scene. Many of the earlier actors had passed away. Innocent III. was dead, and the third Honorius occupied the Papal seat. He had not the ability of Innocent, but had all his hatred to the enemies of the church. Phillip Augustus had also passed away, and had been

succeeded by his son Louis VIII., who became the tool of Honorius. With Amaury De Montfort, the son of Simon, and his heir, he invaded Provence, and, at the head of a large army, laid siege to Toulouse. The city was valiantly defended by the younger Raymond, who for some time kept Louis and Amaury De Montfort at bay. The church had gone too far and her legates had, in a manner too harsh, carried out the church's behest on the heretics, and now the people of Languedoc, regardless of the commands of the church, all aided in the war against Louis and De Montfort. The war languished, Louis returned to France, and De Montfort, despairing of success, relinquished the struggle and became a Constable of France. Raymond was thus left in possession of the domain of his ancestors, and there was once again a bright prospect of peace. But the hope was illusory, for there was still another act in this sad drama. In 1235, Honorius convened a provincial council and called on Louis VIII. once again to purge the land of heretics, and accorded him the ecclesiastical revenues of France for the next five years. Louis accordingly took up arms, and joined by a large number of his barons, prepared to carry out the commands of the Pope. The country had now suffered so much from the repeated invasions, and had so frequently been laid waste, that the heart of the

people sank within them, and they hastened to offer timely concessions, in order to avert the new calamity that threatened them. But death once again brought a temporary relief. Louis VIII. fell a victim to a contagious disease, which also cut off 30,000 of his soldiers. His son was an infant, and the regent of France was Blanche of Castile, a woman of noble character, under whose care and influence, the infant prince was to become one of the most able and the most saintly of kings, Louis IX.-St. Louis. The queen mother ordered the siege of Toulouse to be resumed. Fouquet, the evil genius of the place, advised that the whole country around should be laid waste, thus depriving Toulouse of its supplies. The advice was followed, and Toulouse remained the centre of a desolate wilderness. The spirit of Raymond himself gave way when this new viol of wrath was poured out on his beloved country, and in April, 1229, he signed the treaty of Paris, by which he abdicated his feudal sovereignty to the king of France, a small territory only being excepted as a dower for his daughter, the heiress and last representative of that noble family. The unhappy father himself was conducted to the church of Notre Dame at Paris, and there underwent, from priestly hands, the same public and ignominious discipline which the sixth Raymond had endured in the church of St. Giles. Yet an-

other woe before the drama closed. In little more than six months from the cession of Languedoc to the French crown, a council was held at Toulouse, which established the inquisition for the preservation of the true faith, and the punishment of heresy among the people of Languedoc. In 1242 Louis IX. and Raymond VII. formally ratified the treaty of 1229, and Provence, with its beautiful valleys, fruitful of the rarest and richest products, and looking out on the Mediterranean with its growing commerce, and its many interesting associations, became an appanage of the French crown.

Almost contemporaneous with these events in the south of France occurred another movement by which the greater part of the west of France came into possession of the French crown.

The conquest of England by the Norman Duke William united the kingdom and the duchy under one rule, but on the death of William, his son Robert succeeded to the duchy, while William, the second son, obtained the English crown. As I already mentioned, Robert, when going on a Crusade, mortgaged his Duchy of Normandy to his brother William. Just as Robert returned from the Crusade William died, or rather was killed when hunting in the new forest, and his younger brother Henry succeeded to both the English throne and to the Duchy of Normandy, the mortgage having been

foreclosed a little before. Robert took up arms to enforce his claim to the duchy but was not successful, and after a second attempt, fell a captive into his brother's hands, who assigned him the castle of Cardiff, where after a long sojourn he died. Through the marriage of Matilda, the daughter of the conqueror, with Geoffrey, Count of Anjou, this county with some smaller possessions, was, on the accession of Henry II., added to the English territory in France. Henry was scarcely out of his teens when he married Eleanor of Aquitaine, who was the divorced queen of Louis VII. By the earlier marriage she had brought to the French crown Aquitaine, Guienne, and indeed the greater part of the south-west of France, but by her divorce, and her subsequent marriage with the English king, all this important territory was transferred to the English crown. The holding of such extensive possessions in France by England, was a source of difficulty to the French king. The English monarch, as Duke of Normandy and Count of Anjou and Aquitaine, had to do fealty to the king of France, and this only tended to increase the ill feeling which always existed between the two monarchs, and Phillip Augustus early entertained the hope of being able to expel the English from the soil of France. In planning a Crusade with Richard, he doubtless expected that he might find the opportunity he

desired, just as he did afterwards when he sought to obtain possession of Richard's person from the Duke of Austria, who had made him a prisoner as he passed through that country when returning from the Crusade. On Richard's death John succeeded to the English throne, and by the murder of his nephew, Arthur of Brittany, who was under the tutelage of the French king, he afforded the pretext which Phillip wished. Phillip wrested all the territory which England held in France from this weak English king. John made an effort to recover possession of this extensive territory, and entered into an alliance with the Count of Flanders, and with his nephew, the Guelphic Otto, emperor of Germany. At the battle of Bouvines the allied forces were defeated and Phillip remained in full possession of all the lands which in France had been held by the English crown, and now the territory of the king of France, once so limited, looked out on the western ocean, as well as on the southern sea.

Now that the crown had made the whole of France, with the exception of a few counties, subject to its jurisdiction, and annexed to the royal domain, it seemed necessary to adopt some measures to secure this extensive territory against any future dismemberment, and there were passed two series of rules which established the transmission of the crown, and rendered

impossible the alienation of any part of the domain. Under the Merovingians, and the early Carolingians, succession to the throne had been hereditary, but under the later Carolingians it had become elective, and this had made the succession of the Capetians more easy. Hugh Capet associated his eldest son with himself, and caused him to be crowned during his lifetime. This practice was adopted by the succeeding members of his family, and there was therefore no break in the line of succession. Under Phillip Augustus, however, the hereditary of the throne was fully established.

The battle of Bouvines, which resulted in the complete overthrow of the allied forces, and the defeat of John's effort to regain Normandy and the other possessions which England had held in France, is one of the most important events in French history. Never had France been in greater danger, a danger which threatened not merely the throne but the whole kingdom, Minor distinctions were for a time forgotten, and Phillip summoned to arms, not merely the vassals of his own limited territory, but the grand seigneurs of the kingdom, and also the Burghers of the Communes. For the first time in the history of France the king's barons and vassals, and the king's burghers and peasantry, stood together to meet a coalition of foreign princes. The victory which was gained was

one in which the king and the king's vassals, with the greater barons and the burghers, alike shared. The union of different classes and different populations in a sentiment, in a contest, and a triumph, was a most decisive step in the unity and organization of France. The victory of Bouvines marked the commencement of a time when men might speak, and did speak, by one name of France and of the French. On that day a kingship of united France and of a French nation may be said to have risen out of the feudal system. It was certainly, when taken in connection with the possession of Normandy and of Aquitaine, and the acquisition of Provence through the Albigensian Crusades, a most important event, for it was the beginning of a new epoch in French history. Now the French monarchy entered on a new development, a development which in time should lead to absolutism.

## LECTURE XXIII.<sup>1</sup>

### THE DEVELOPMENT OF THE LEGAL ADMINISTRATION IN FRANCE.

No country has apparently passed through so many and such great changes in its judicial administration as France. I pointed out in previous lectures that, under the Merovingian kings, justice was administered according to the Gothic codes. Thus the Salian Franks were governed by the Salic law, while the Ripurians were allowed an appeal to their own separate code, as were the Alemanni, the Visigoths, and the Burgundians, and a like privilege was granted to the Gallo-Romans. This evidently implied a want of consistency, and the absence

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1. Books consulted.—*Les Institutions Monarchiques de la France* par A. Luchaire. *Etudes sur les actes de Louis VII*, par le meme auteur. *Vie de Louis le Gros* par Suger suivie del'Histoire du Roi Louis VII, par le meme auteur ; tr. par M. Guizot. *Histoire des Institutions Politiques et Administratives de la France*, T. II par Paul Viollet. *Etude sur la vie et le regne de Louis VIII* par Ch. Petit-Dutaillis. *Les Etablissements de St. Louis* par Paul Viollet. *Essai historique sur L'organisation judiciaire* par J. M. Pardessus. *Histoire du droit, et des institutions de la France* par E. Glasson, T. VI-VII. *Les origines du Parlement de Paris et La Justice aux XII-XIV siecles* par Gustave DuCoudray. *Histoire du Parlement de Paris* par Felix Aubret.

of a uniform system. The several states had not yet formed a complete unity, and there was an evident willingness to concede what might have been regarded as the rights of its several members.

Under Charlemagne, while the kingdom was very much extended, it acquired greater unity, not only in its general political development, but also in its judicial administration. For a time the Salic law prevailed to the exclusion of the other codes, and subsequently the edicts of the king gradually superceded all the earlier legal forms. The courts of the Gau, or County, and of the Centena or Hundred, which the Franks had brought with them from their German homes, continued in force, but the Count and the Centenarius or Hundred man, who presided in their respective courts, as well as the Sacabarones, and the Scabini, were no longer elected by the people, but were appointed by the king, to whom the whole administration of justice was subjected. He was the source of all law, and to him was the ultimate appeal. The count had previously held his office for a limited period, but henceforward it was permanent, and in time became hereditary. As yet, however, his authority was delegated, and his duties were discharged only on his receiving a commission from the crown. But with the permanency, and even heredity of office, and in the weakness of

the later Carolingians, the count, who held a seignury, soon usurped entire judicial and military control over it. The arbitrary power of Charlemagne and his immediate successors was broken, and with the disintegration of France, under the feudal system, the crown lost the right of administering justice and of exacting military service. The arbitrary government of the feudal lords was substituted for the arbitrary rule of the king. With the accession of Hugh Capet, the rights which the seigneurs had usurped were fully recognized and even legalized, while the actual power of the king in judicial and military administration was limited to the counties which he held as Count of Paris, so that his suzerainté of the kingdom was little more than formal. This was the state of France during the reign of the first four kings of the Capetian line. These were not weak kings, yet they were unable to overcome the power of the feudal lords. The king, however, now held two courts, the one formed by his own vassals of the county of Paris, and the other held by him as grand suzerain of the kingdom, and to which he might summon the greater barons, though his right to do so was often disputed, or at least disregarded. Under Louis VI. and VII. the power of the crown began to make its influence felt and effected an improvement in the administration of justice. Several circumstances contributed

to bring about this change. You will remember that the king had guaranteed the enfranchisement of the Communes, and now any disagreement that might arise between a Commune and a seigneur was naturally referred to the royal jurisdiction. It was the royal court which inquired into the matter and determined the judgment. Another circumstance was that most of the suits that arose out of complaints of the bishops and abbots against the encroachments and exactments of the feudal lords were also appealed to the king. This was of very frequent occurrence in the reigns of Louis VI. and VII.<sup>1</sup> It was seen that there was no other means of obtaining redress of their grievances than through the Curia Regis and there was therefore a constant appeal to this supreme court. There was, however, not any very consistent mode of the meeting of this court, or of its administration. The kings of France were at all times, whether in the capital or travelling through their kingdom, accompanied by a band of nobles who were at once advisers, and assisted as assessors in the administration of justice.<sup>2</sup>

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1. A large number of cases are recorded in Luchaire's *Etudes sur les actes de Louis VII* and also in his *Histoire des institutions monarchiques de la France*, T. II, p. 327, also Langlois *Les textes relatifs à l'histoire du parlement*, *passim*.

2. Fustel des Coulonges regards this practise as a

The court of the king thus formed was very irregular. It was held in different places where for the time the royal party might chance to be, and was rarely composed of the same persons. It generally met at Christmas, at Epiphany, Easter and Pentecost.

From an early period there were some offices which were permanent and were filled by the same individual for a lengthened term or even for life, and these officials were at once officers of the royal household and members of the Curia Regis. These offices, which arose largely out of the feudal relations, were the prizes which were granted to the heads of feudal houses, and they were simply honorary. It was regarded as a mark of distinction to be called to take part in the direction of the palace, and in the general administration. But besides these permanent officials, it was usual to summon others, as occasion might require, to afford information, to assist in holding a court, or to give advice, and as the country in general, as well as the county of Paris, was in a disturbed state, it might be found advisable to summon many to the council, and thus draw them nearer to the central power, as well as excite a general interest in the adminis-

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continuation of the German custom of the prince or chief being surrounded by his Comites. I can see no necessity for attributing the present practise to that ancient custom though M. Ducoudray seems to adopt M. Fustel de Coulanges' theory.

tration of the county or of the kingdom. This irregularity in the constitution sometimes led to difficulty, and, on more than one occasion, an attempt was made to give to the constitution a more special character; but so long as the royal domains were of limited extent, it was impossible to avoid these difficulties. With the increase of the royal domains, which took place under Philip Augustus and Louis IX., the organization of the courts underwent a change. The smaller court, whose jurisdiction had been confined to the county of Paris, was entirely merged in the larger court, which the king now held as grand suzerain of the whole kingdom, and whose jurisdiction was very generally accepted by the grand seigneurs. The old distinction of the pays de obeissance and de non-obeissance was broken down, for the judicial power of the Curia Regis extended to the whole kingdom, with the exception of a few counties. This gave greater solidarity to its constitution, not merely as to the place of its meeting, but as to the persons composing it. The establishment of the court at Paris was also calculated to give it force and permanency. The question as to when it was established in Paris has been much discussed. The opinion, which long prevailed, that it became sedentary under Phillip Le Bel, has been very generally discredited, but it is perhaps impossible to arrive at any certainty.

All that can be said is that many of its processes are dated at Paris in both the reigns of Louis VI. and VII., but this does not positively imply that it had then ceased its perambulations. It seems, however, to have been certainly permanent in the reign of Louis IX., and with Phillip Le Bel its home in Paris was firmly established by law. Who constituted the Curia Regis is also a matter which has been much discussed. M. Luchaire has, I think, very properly separated the history of the officials of the crown under the Capetians into two periods, but I do not think that he sufficiently points out what may have caused the distinction. The first period comprises the reigns of the first four Capetians, while the latter begins with the closing years of Phillip I. and extends to the accession of Phillip Augustus. During the earlier period there was an evident want of order. The court was deficient in organization, and the royal charters which were issued are rarely signed by the same parties, and the superscriptions of inferior officers are mingled, without any attempt at classification, with those of higher officers. This is undoubtedly due to the fact that the crown was not established in one place, and was not therefore formed of the same parties, and that the members of the royal household, though their functions were not as yet clearly defined, were

required to affix their names to the royal documents.

At the end of the reign of Phillip I. and under Louis VI. and VII., when the court met more regularly at Paris, and when it was losing its feudal character, and becoming more monarchical, its administration very naturally assumed a more orderly form. There was no longer an interminable list of subscriptions which showed complexity and disorder, arising from the confusion of feudal elements, of which the court was composed. The charters issued by Louis VI. and VII. are shorter, of a more regular type, and are signed in confirmed order by properly qualified officials. Though at one time it might have seemed advisable to summon a large number to the royal council, it was later felt that this was associated with danger. The relations between feudal houses were not harmonious, and their difficulties and dissensions were certain to make themselves evident in the neighbourhood of the palace. But from the accession of Louis VI., and especially in the reigns of Phillip Augustus and Louis IX., it was the object of the crown to free itself from the power of the feudal lords, and one mode of effecting this was by diminishing the number of the councillors, and by entrusting the office only to those on whose judgment and honour the utmost reliance could be placed.

There is no doubt that the earlier kings of the Capetian dynasty did often summon the barons of the whole kingdom to consider matters of common interest, but apparently not questions of jurisdiction. The roll of those present at these councils has been preserved, and it is to be noticed that the names of the greater barons, as the Dukes of Normandy or Burgundy, or the Counts of Aquitaine or Brittany, of Anjou or Auvergne, very rarely occur. The higher clergy were nearly always represented, especially those from the royal dioceses of Rheims, Sens and Tours. It is often impossible to decide whether the Curia, Concilium, Conventus, or Colloquium, for these words are used as synonymous in the edicts, was the council of the magnates of the whole of France, or merely of the royal seignury. The court and its jurisdiction had, however, now ceased to be feudal, and become national, and its work had so much increased that it was absolutely necessary to reorganize its service. Matters also of great gravity, which might touch very seriously the relations of the crown, were constantly arising, and it was of the greatest importance that the monarch should be surrounded by persons who might aid him by their counsel. But in order that the judgments should be uniform, and that the counsel which was given should be characterized by the same principles, and adapted to the same

moral ends, the ends or purposes which governed society, it was necessary that the council should be constituted of the same individuals. But further the diversity of interests and of operations in both the judicial and administrative affairs of the state required a corresponding division of labour, that special offices and duties should be assigned to different individuals, according as these were best fitted by their abilities and by special qualifications for their proper discharge. The feudal or rather national court became divided into several faculties or departments. At what time this transformation took place cannot be very definitely determined. As a society, which has been virtually dissolved by anarchy, advances to order, improvements are gradually introduced, just as their need makes itself felt, or as experience may suggest. Suger in his lives of Louis le Gros, and Louis le Jeune mentions a number of cases of contests between feudal lords which were brought before the royal court. They were purely of a legal character, and required to be decided on legal evidence, and by experienced judgment. It would not do to decide these often intricate cases by ordeal or wage of battle, or by the caprice of the feudal courts. It therefore became more and more evident that as the royal courts had gradually superceded the feudal courts, they should be reorganized to meet the requirements

of the changed circumstances which had arisen. The encroachments of the royal courts on the powers of the baronial or seigneurial courts was very gradual. For two hundred years the barons had exercised independent jurisdiction, and any overt act to interfere with that jurisdiction would certainly have been resented. Fortunately Phillip Augustus and Louis IX. had too much prudence to interfere directly with the judicial rights of the barons, yet they accomplished very much. With the extension of the royal domain it became possible to summon a larger number of the barons to consult as to the affairs of the kingdom, and any decrees which were the result of these consultations were issued *cum concilio et consensu nostrorum baronum*, council and these decrees came into force, if not throughout the whole kingdom, at least in the counties of the barons which had given their consent to them.

In time the crown established courts which absorbed many of the powers that had been exercised by the baronial courts. Courts had been established apparently by the early Capetians, which were presided over by Prevots. These Prevots superceded the Counts, at least in their judicial powers. The last Count mentioned as Count of the city of Paris was Bouchard, to whom Hugh Capet granted the office,

but only for life.<sup>1</sup> In Henry I's reign the appointment of a Prevot of Paris is distinctly mentioned, and from that time the appointment was general throughout the smaller royal domains, and afterwards in the more extended. Over these local Prevotal courts were placed Baillis. These filled an office somewhat similar to that which had been exercised by the Missi of Charlemagne, and had a supervision over the local courts, and the district assigned them was called a Bailliage.<sup>2</sup> The term Bailli, however, apparently prevailed generally in the north, the land of the Langued'oil, while that of Seneschal seems to have been peculiar to the south, in Languedoc. They represented the royal power, summoning the contingents to the royal army, and receiving the fines and dues from the court, as well as the revenue from the Bailliage, and were accountable for this to the royal treasury. It is difficult to determine what judicial powers they at first exercised, but afterwards those

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1. *La vie de Bouchard*, p. 4 Guizot's *Collection des Memoires*. His biographer is very eulogistic as to the discharge of his office.

2. *Etablissement de St. Louis*, T.I, Ch. LXI and LXXVI. Beaumanoir was Bailli in the county of Clairmont en Beauvaisis and gives details of the office in his *Coutumes de Beauvaisis*, ch. I. M. Boutaric has given a list of the Baillaiges and of the Senechaussées throughout France. *La France sous Phillip le Bel*. See also Tardif's *Coutumier de Normandie*, vol. 2, ch. de officio senescalli. The district of the Seneschal is however here called a Ballivia, a Bailiwick.

cases which affected the interests of the crown, *les cas royaux*, were evoked alike from the seigneurial and prevotal courts to the jurisdiction of the Baillis.

I cannot too strongly impress on you the fact that changes in a constitution are invariably of slow growth. The change from feudal jurisdiction to national or royal was not achieved by any sudden or spasmodic movement, and it is only natural to suppose that the feudal lords and their vassals would alike resist any encroachments on their rights and privileges. There is no doubt that judgment by ordeal or by wage of battle was popular, and it was some time before judgment on evidence, calmly considered, was likely to supercede the earlier forms. There were besides fees payable to the seigneur from the feudal courts, and he was not likely to relinquish these without a struggle. A vassal also was entirely dependent on his seigneur, and it might be difficult to subtract himself from his jurisdiction, and appeal to the Prevotal courts, and finally to the Curia Regis, for this would seem to imply a breach of faith. In an ordinance of Louis IX., of 1257, it was decided that an appeal should not be enforced when it was not accorded by the Coutume, and only in 1260 was wage of battle prohibited, though it was even then found difficult to enforce this. About the same time it was agreed

that part of the fines levied in the Prevotal courts should be paid to the seigneur. It will be readily understood on the other hand that the kings would seek to extend their jurisdiction. Before even the enlargement of the royal domain, they took every opportunity to employ fully any privilege which they might legitimately claim. There was a feudal custom for a higher seigneur, and more especially for the king, even in travelling out of his own immediate domain, that he should enjoy the *droit de gîte* or right of purveyance, but the presence, according to the same feudal precedent, of the higher seigneur, for the time superseded the jurisdiction of the vassal, and two documents remain which testify, that in 1160 Louis VII., and in 1180 Phillip Augustus held courts, the one at Chalons sur Saone and the other at Yezelai in Burgundy. The Duke of Burgundy was himself a grand seigneur, and therefore under ordinary circumstances every suit should come before his court, but in the presence of the grand seigneur, the king, the royal court was for the time substituted for the feudal court of the duke. But, as I have mentioned, the absence of many of the seigneurs on the Crusades tended to change the character of feudal justice, and the important duty of judicial administration was relegated to a lieutenant or a regent, who could scarcely be expected to exer-

cise the same independence as had been exercised by the seigneur himself. In the East too many of the seigneurs had become acquainted with Roman law and with its administration in the courts, as at Constantinople. Such as returned from the Crusades would naturally be led to introduce some better order into their feudal judicial administration. But also the study of Roman law, which had begun to be pursued in the Italian universities, would certainly tend to still further effect a change in the conduct of the court. Legal gentlemen instructed in Roman law and taught to weigh evidence were soon to be found in all the countries of Western Europe. It was very generally these legal gentlemen to whom was confided the administration of justice during the absence of a Crusader, and the result would naturally be the substitution of regular judicial processes for the old forms and customs of feudalism, such as trial by ordeal and judicial combat, which both Phillip Augustus and St. Louis sought to remove. Deprived of these martial tests the feudal baron did not take well to the slower and nicer criteria of truth to which he was not accustomed. It was something new for him to weigh evidence, whether oral or documentary, and to form a clear and unprejudiced judgment. He was therefore the more ready, on the one hand, to seek the aid of an assessor more learned than himself, who had been

instructed in the Justinian and Theodosian codes and in the modes of Roman procedure, and on the other hand, he might be supposed to be less reluctant to yield to the encroachments of the judicial powers of the crown.

An attempt was made to introduce a chair for the study of law in the University of Paris, but unfortunately the church opposed this. The church regarded with suspicion any measure which might even remotely be considered as interfering in any way with her privileges, and she attributed the disorders which had lately arisen in the university largely to the study of civil law. The study was, therefore, forbidden by the council of the Lateran in 1113, by Pope Alexander III. in 1180, and by Honorius III. in 1219.<sup>1</sup>

The royal courts became more and more attractive, and it was not difficult for the royal lawyers to find in the Pandects of Justinian grounds for enlarging the powers of these courts, or at least analogies for such enlargement, of which the crown was quite ready to avail itself. Thus the study of Roman law revealed the facts:

First—That every imperial Rescript had been binding, and in force throughout the whole of the Empire.

Second—That the Emperor had been accustomed to withdraw, from the lower tribunals

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1. Luchaire *L'université de Paris sous Phillippe August.*

to his own, those cases which were called *causae majestatis*.

Third—It was a maxim that a party to a legal process might declare his domicile, that is, that he could claim the right of being tried before the Emperor.<sup>1</sup>

Fourth—The imperial code had further determined that Rome was the *communis patria* of every Roman freeman.

Now these might be made applicable to the jurisdiction of the French crown, and it was maintained in the first place that, just as in the Roman Empire, so in France every decree issued by the king should be held to be binding and in force in every part of the kingdom.

Secondly—As in the Empire in *causae majestatis*, so in France the king was entitled to evoke all *cas royaux* from the seigneurial to the royal courts. It was easily discovered that few cases could arise in the seigneurial courts which might not affect, in some form or other, the king's rights as suzerain of the realm, and consequently might be drawn within the cognizance of the royal courts.

Thirdly—As in the Roman constitution, any freeman might declare his domicile or appeal to Cæsar, so in France it became a maxim, and then an express law, that any party in a legal

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1. We are reminded of Paul's appeal, as a freeman, to Cæsar.

process might declare whether he preferred to be the liege man of the baron, or of the king, and according to his choice he appeared before the baronial or the royal court,<sup>1</sup> and as Rome was regarded as the *communis patria* of every Roman freeman, so Paris was regarded as the *communis patria* of every citizen of France.<sup>2</sup> Thus gradually seigneurial jurisdiction gave way to royal jurisdiction, and the seigneurial courts were superceded by the Prevotal and Bailli courts, and finally by an appeal to the Curia Regis. But the towns had also grown in importance, and commercial enterprises had rapidly developed, and out of these grew relations which could only be decided by regular judicial proceedings. The relations also which existed between the bourgeois or citizens, and the roturiers or peasants required a change in judicial administration. In

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1. These changes, however, did not take place till the reign of St. Louis or of Phillip le Bel.

2. The influence of Roman law on the judicial administration of France becomes very evident in the reigns of Phillip Augustus and Louis IX. Pardessus quotes a passage from Gaspard Berthius in regard to the suit of Phillip Augustus with the Count of Flanders concerning their respective claims to Vermandois, where it is said "*Vides juris civilis non ignarus, quod tum per scholas regnabat*" and in an ordinance of 1177 it is stated that there had existed, for some time, auditors exclusively employed in giving instructions in places governed by Roman law. Quotations from Roman law are frequent in the legal documents of the time, and each chapter of the *Etablissement* cites Roman and also Canonical law.

this way the work of the royal central court, the Curia Regis, was very much increased, and as a great court of final appeal it became necessary to divide its functions, and there were founded the court of Enquetes or of judicial enquiry, and the court of Requetes or of appeal in case of default of judgment in the lower courts.<sup>1</sup> At the same time the old Curia gave place to the great council, or as it was then more generally called, the Grand Chambre, which continued to be an advisory board of the palace, and also the final court of appeal. It was no doubt called the Grand Chambre as it stood in relation to the lower courts of Enquetes and Requetes, and of Des Comptes, or of Exchequer. For some time these chambers, or courts sufficed for the general judicial administration. Another reason which led to the separation of the Grand Chambre from the other courts was, that while the courts of Enquetes and of Requetes became sedentary in Paris, the Grand Chambre, in its

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1. There was a court of requests in England, which was definitely established under Henry VII, which was intended to expedite civil cases and diminish the expenses; it was called by Wolsey "the poor man's court." The members of the court of the Star Chamber were its judges. The Lord Privy Seal was its president, and he also was a member of the court of the Star Chamber. Indeed this court of requests may be regarded as the civil side of the Star Chamber jurisdiction; vid. Selden's society publications, vol. 12, also Sir Thos. Smith's Commonwealth of England, B. III, ch. 7 where a short account of this court is given.

capacity of an advisory board, was necessarily attendant on the king wherever he might be, and for the same reason, it was generally composed of the higher permanent officials of the palace.<sup>1</sup> This was also a cause which led to a further change, and was the origin of the Parliament of Paris. It is very difficult to distinguish with satisfactory clearness the respective spheres of the Grand Chambre, and of the Parliament of Paris.<sup>2</sup> Indeed throughout the Middle Ages, and not in France only, but in other countries of Europe as well, it is very difficult to separate, with any distinctness, judicial and executive functions. Perhaps because of the great dearth of capable persons it was necessary that the same individuals should act in a double capacity. The difficulty occurs in the history of our own English constitution, for under the Norman kings the administrative and judicial powers were, with few exceptions, vested in the same officials.

The special officers to whom the inquest of Domesday was committed were the royal justices, who were members of the Curia, and some of whom were attached to the household of the

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1. Subsequently this gave annoyance to the peers, who formed the Grand Chambre and they insisted that the officials of the palace should be excluded from this court.

2. Glasson seems especially faulty in this respect, and even Aubert who particularly devotes himself to the subject, seems wanting in clearness.

palace, as the king's trusted advisers. The itinerant justices established by Henry II. were also members of the Curia, and at the same time the king's councillors.<sup>1</sup> It is especially stated of the six justices of the northern counties that they were also "*justiciarii in curia regis constituti ad audiendum clamores populi.*" The custodes placitorum regis, afterwards called coroners, were at once the representatives of the people, elected in the county court, and at the same time active conservators of the king's peace and the guardians of the sovereign rights of the franchises of the crown. The Curia was undoubtedly introduced by the Norman William, as a court of appeal from the local courts of the Hundred and County, but also marked the centralization of judicial administration in the crown. Like the Curia of the French king, the Curia of the Norman king was at once a supreme court of justice and an advisory board. But, with the establishment of the justices in Eyre, the work of the Curia was very much increased and it became separated into the court of the Exchequer<sup>2</sup>

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1. Ranulph de Glanville was a trusted councillor of Henry II, a member of the Curia, a Baron of the Exchequer, and a justice in Eyre performing circuit.

2. The court of the Exchequer existed in Normandy before William invaded England, having grown out of the Norman Curia though the name used to designate this court was doubtless given subsequently to its establishment in England. There is no doubt that William planted

of King's Bench and Common Pleas. For some time longer the Curia continued to exercise judicial and executive functions, and only at length did its judicial power become combined with the judicial power of the House of Lords, while its executive power is represented in the modern Cabinet. Now in France the Curia passed to the Grand Chambre, while the courts of Enquetés, of Réquetes, and of Des Comptes developed out of it, just as the courts of the Exchequer, King's Bench, and Common Pleas in England developed out of the Norman Curia.

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several of the Norman Coutumes (Consuetudines) in England. The Curia Regis was certainly brought over by the Normans and it is quite possible had developed before the Conquest. The court with the same functions existed among the Normans of Sicily.

## LECTURE XXIV.<sup>1</sup>

### THE DEVELOPMENT OF THE FRENCH COURTS.

In my last lecture I traced the development of the judicial system in France and the changes through which it passed, arising from the extension of the royal domains and the overthrow of feudalism. This resulted in the very general substitution of Prevotal and Baillis courts for the seigneurial, with an ultimate appeal to the supreme royal court, the Curia Regis. With the extension of the royal domains and the growth of the towns, together with their relations with the rural population and their subjection to royal jurisdiction, the work of the great central court of appeal was very much increased. It became necessary to separate its several functions into dis-

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1. Authors consulted.—*Histoire des Français* par M. Sismondi. *Histoire des Français* par M. Michelet. *Histoire de France, constitutionnelle et administrative*, par M. Capefigue. *Histoire du Parlement de Paris* par M. Aubert. *Histoire du Parlement de Paris* par M. DuCoudray. *Constitutional History of England* by Wm. Stubbs, D.D., LL.D. *Englische Reichs und Rechtsgeschichte* von Dr. George Phillips. *Deutsche Staats und Rechtsgeschichte* von Carl Fr. Eichhorn. *Histoire du Droit et des Institutions de la France* par M. E. Glasson. *Essai sur l'Histoire du Droit Français au Moyen Age*, 2nd partie, par M. Giraud.

tinct spheres of jurisdiction, and so to form separate courts. I drew a parallel between these changes in France and what took place in England when the functions of the Curia of the Norman kings were divided between the court of the Exchequer, the court of King's Bench, and that of Common Pleas. In its relation to the subordinate chambers of Enquetes, of Requetes, and of Des Comptes, the Curia Regis of the French king became known as the Grand Chambre. But while this Grand Chambre was the highest court of judicial administration it had also advisory and executive powers. In time a further change took place, and while the Grand Chambre retained its advisory function, its judicial and executive powers passed over to the Parliament of Paris, and the Grand Chambre, in its character of an advisory board, was henceforward known as the Grand Conseil, or more frequently the Grand et Secret Conseil. These several changes occurred in the natural course of development. For some time the respective

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Histoire des Institution politiques et administratives de la France par M. Viollet. Essai Historique sur l'Organisation Judiciaire par M. J. N. Pardessus. Essai sur l'Administration du Royaume de Sicile sous Charles I et Charles II d'Anjou par Leon Cadier. La France sous Phillip Le Bel par M. Ed. Boutaric. The Theory of Law in Civil Society by Augustus Pulzsky. Geschichte der Hohenstauffen von Von Raumer. Histoire Constitutionnelle de la Monarchie Espagnole par le Comte Victor du Hamel. Alain le Grand Sire d'Albert—Administration Royale, la Feodalite du Midi par M. Luchaire.

powers of the Grand Conseil, and the Parliament, were not well defined, and the Conseil continued to exercise judicial as well as executive powers. The members of the Conseil were at first chosen from the higher nobility and the officials of the royal household. Positions in the royal palace, such as chamberlain, marshal and constable, were eagerly sought by the chief barons, as they carried an influence which was important, and might be made available in many directions. We find, however, that at the time of the English wars, as after the battle of Poitiers, when John fell a prisoner into the hands of the English, the Conseillers of the Regent Charles were chiefly from the Bourgeois class. Thus Simon de Bucy was the son of an obscure avocat or lawyer, and rose from one position to another till he became the principal adviser of Charles. His office, however, was President of the Parliament, but as an instance of the interlacing of offices, he was also the leading member of the Conseil. No doubt very many of the nobles had perished in the wars, and this principally accounts for the fact that nearly all of the Conseillers were from the Bourgeoisie, as Robert de Loreis, Enguenur de Petit-Cellier, Nicolas Braye, Jean Cheabeau and Jean Paidlier. The Parliament of Paris was at first perhaps a more select body as composed of the leading peers of France, six lay and six

ecclesiastical.<sup>1</sup> The Dukes of Normandy and Burgundy, the Counts of Flanders, of Aquitaine, of Toulouse and Champagne, with the Archbishop of Rheims, and the Bishops of Beauvais, of Noyon, Langres, Chalons, and Laon. It was not a legislative body like the English Parliament except in so far as it enregistered the royal decrees. The enregistration by the Parliament of the decrees and ordinances as they were issued from the palace, commenced about the end of the fourteenth century, or even earlier, but it was then simply a notarial act. Later, perhaps through the action of the States' General, it acquired greater importance, and the enregistration came to be regarded as a constituent part of the law or ordinance, and this has been accepted by some writers as giving the Parliament a legislative power. This would be no more correct than if we were to ascribe legislative power to the Supreme court of the United States, because this court has the right of *vetoing* an act of Congress which may conflict with the constitution. The constitution is a written constitution and Congress is therefore not a sovereign law-making body, but this cannot be regarded as giving the Supreme court legislative powers,

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1. There is no positive mention of the number of peers that constituted the early Parliament of Paris, but some contemporary or shortly subsequent writers, as Froissart, allude to the twelve peers of the Parliament, and the peers named above are generally regarded as the original peers.

and it is even less justifiable to ascribe legislative powers to the Parliament of Paris. But if these twelve peers named constituted the original Parliament of Paris, the number did not long continue so limited, for under Phillip le Bel, the Counts of Anjou, of Brittany and of Artois were raised to the peerage. Afterwards the distinction was conferred on any prince of the blood who had acquired an appanage. At a later period it was conferred as an honorary distinction on barons holding inferior fiefs, and grades of nobility began to be opened up, and as the crown had the sole right of investiture, so these new men were secured to its interests. But already under St. Louis, a change in the constitution of the court had taken place. The nobles, who were more at home in feats of chivalry than in the administration of justice, or who were more familiar with the rules of the tournament than with the Roman law, or with the Coutumes of France, were not qualified for the high and important position of judges in the Supreme court of the realm. The clergy too, were so intimately associated with the social and political life that we are not surprised to find them taking an important part, not only in the Conseil, but also in the Parliament of Paris. As I have before noted, the church throughout the Middle Ages exercised a temporal, quite as much as a spiritual power. The bishops, ab-

bots, and some of the lesser clergy were seigneurs, and had their domains, their vassals, their men-at-arms, their treasury, and their courts of justice. Besides they formed the learned class, and as they had taken the principal part in the feudal assemblies, so we find that they now became the leading judges in the Parliament, and in the two reigns of St. Louis and Phillip le Hardi there has been preserved a list of sixty-seven prelates, and other church dignities, who had seats in Parliament, while in the courts of Enquetes and of Requetes they were also equal in number with the lay members.

According to the principles of feudalism grand seigneurs had a right to be members of the king's court, and it was their duty to be present at the place and time indicated for its being held. But this duty was not well observed, and only a few appeared at the assemblies. The king was tolerant of these omissions because the fewer the number present the greater was the power which he was able to exercise. He presided at the meetings, and the ordinances were issued in his name. A little later the court seems to have exercised this right, and the documents of the period show the form *Curia judicavit* or *mandavit* or a *curia judicatum erat*, but the king as still holding executive power affixed the royal seals, and carried out the determinations of the court. But with the growth of

the royal power the Parliament, which represented the judicial authority of the earlier court, came almost entirely under the king's rule. On the formation of the Conseil, as well as of the Parliament, the members seem to have received their appointment from the king. Theoretically the selection should have been made each year, but the list of names of the members of the Parliament shows that there was a tendency to permanency of office. In 1343 an ordinance gave the right of nominating to the Conseil to a commission composed of the chancellor, three presidents of the several courts and ten members of Parliament, but the king was not bound to accept the names which were submitted to him. Two years later another ordinance gave to Parliament the full right of nominating. On the remonstrance of the States' General of 1356 the king removed several members from parliament, as also from the Chambres of Enquetes and Requetes, but two years after, again on the petition of the States' General, these were restored to their offices, and for some time after this the king retained in his own power the appointment of members of Parliament as well as of the other courts. There were, however, occasions when he gave to the Conseil the right of nominating the Chancellor. In 1389, under Charles VI., the Parliament again received the right of electing its own members. While the

different courts in France were assuming a regular organization the force of law was manifesting itself not merely in purely legal matters, but also in political. It will be well, therefore, to direct your attention to the development of law in the Middle Ages. Montesquieu has pointed out that the later period of the Middle Ages—the twelfth and thirteenth centuries—is essentially a period of legal development, when the rights and wrongs of the several orders in the state began to be respected and guarded, and he goes so far as to say that in no period in the history of Europe was there so much attention paid to the civil liberties of the people, or to the prerogatives of the nobles and the clergy, or to the powers of the king.

Among a barbarous or semi-barbarous people caprice is only curbed by customary rules, or by the arbitrary power of a chief, and only gradually do these customs become established and embodied in written laws, but these laws must necessarily be dependent on the other elements of national life. The codes of the Gothic tribes are very minute in their details, they are essentially technical, and are vague in the statement of general principles. These codes gradually gave way to the Capitularies of the Carolingian kings. During the feudal period both the earlier codes and the later Capitularies seem to have been entirely neglected. After the anarchy of the

feudal system, however, the re-organization of society necessitated the promulgation of new laws adapted to the changed circumstances of the new civic and social life. The old codes were utterly unsuited to the new state of things. Very minute, in what may be called the matter of private law, they had no conception of what we term public law.<sup>1</sup> There are laws which should govern our private relations, but there are others which are quite as important, and should rule our public relations—our relations to society and the state. Society had undergone very great changes, the cities had gained a degree of freedom, the burghers had acquired wealth and were reaping the advantages of an improved education, manufactures and commerce had developed, and it was necessary that there should be laws which should safeguard the privileges and pre-

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1. This distinction belongs to modern times. Even among the Greeks and Romans the distinction between private and public laws was not well observed. The Romans did indeed. separate them in principle but not in fact, and individual freedom as distinguished from that of the state was not fully recognized. Neither the Greeks nor the Romans seem to have realized the idea of a great national state. They both lacked the conception of that unity which is so necessary to our idea of a state. The idea of a nation, as an independent and united whole, is a creation of modern times, and seems really to have grown out of the circumstances which we are at present considering. There was no unity under feudalism, and consequently there was no state, and there was no opportunity for the development of public law, but through the overthrow of feudalism great monarchies were gradually formed, and law took a wider sphere.

rogatives of the several classes in this new social life, and should protect the interests of those engaged in commerce and manufacturing industries. It is this which has made the twelfth, thirteenth and fourteenth centuries essentially a period of legislative activity, but also a period when law was much respected. The law, as it was administered in the feudal courts, while it was of a very irregular character, had also very little controlling power. It was might, not right, which prevailed. Intrigues and violence very generally ruled, but toward the close of the feudal period a very evident change was taking place in the relations in which men stood to one another.<sup>1</sup> They were coming to realize that they had social rights which ought to be respected, and which should be asserted in a legal manner, and not by deeds of violence. The study of Roman law in the Universities of Italy, if not also in the University of Paris, and the establishment of Canon law with its admirable, if some-

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1. This is not so marked in the other states of Europe as it is in France. Bluntschli says that the feudal state was pre-eminently a legal state. He is unfortunate in his terms, but he is quite correct when he lays great importance on the fact that in regard to personal rights, and to the processes of exchange of property the feudal administration was strictly legal. It was however limited, there was undoubtedly a definite legal organization, but there was no conception of social or public rights, and no idea of public law. It was a legal system which was limited in its character, and in its very arbitrariness was destructive of independent action or enterprise.

what rigid organization, and the creation of central tribunals with enlarged powers, if they were the fruits of the new influences which were beginning to prevail, contributed also very largely to extend and strengthen those influences. The activity of the state naturally first employed itself in the preservation of the public peace. This took different forms in the several countries of Europe. In an early period we find in England the frithborh, and afterwards the frankpledge, and subsequently to the Conquest the general proclamation of the king's peace with watch and ward.<sup>1</sup> In some parts of Germany the Truce of God—Gottesfrieden—was accepted, but its influence was very partial, and it was not acknowledged by the Emperor for he regarded it as interfering with the exercise of his prerogative. At a period a little later the Emperor issued ordinances regarding the preservation of peace. At first these were applicable only to certain provinces, and had refer-

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1. The reigns of Henry II and Edward I, are perhaps the most important in English history especially in the systematic organization of the English jurisprudence, and in the defining of the judicial powers of the church and state. The system of itinerant justices inaugurated by Henry I but only carried out under Henry II. with their supervision of the hundred and county courts as well as of the manorial, and the codification of English law in the *Tractatus de legibus Angliae* of Glanvil, changed the character of English jurisprudence, and gave it the form which it has at present. The work begun by Henry II was carried out by Edward I. who was himself a lawyer of much ability. He

ence rather to the prohibition of private wars than to the maintenance of public liberties. Still limited as these acts were, they marked a distinct advance toward the promulgation of laws, which should secure more extended liberties, and should maintain those rights and privileges which are so necessary to the well-being of society, and to the development of industrial activity. At length Frederick II., in 1220, issued decrees securing extensive liberties to the several classes of his subjects throughout the Empire, including those parts of Italy which were under his rule.<sup>1</sup>

In Spain the franchises of the citizens were granted, and carefully guarded at a comparatively early period. The towns of Aragon were granted full liberties early in the twelfth century, and the Cortez which met for the first time in 1133 consisted of four estates—brajos—the clergy, two orders of nobility, and the representatives of the towns. The towns of Castile

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had studied at Bologna under the elder Accursius, and the younger Accursius accompanied him to England, when law studies began to receive much attention. Acting apparently upon the advice of Accursius he established a chair of civil law at Oxford, and from that time we have a list of able legists who were educated there—Bracton, and Littleton, and at a later date Coke, Selden and Spelman. The English Common law retained its distinctive Teutonic Character.

1. Von Raumer Geschichte der Hohenstauffen. B. III. s. 137. Boehmer Regesta Imperii. sub anno 1220.

also, very early received enfranchisement, and were granted a large measure of self-government. In 1169, under Alfonzo IX., at Burgos, the Cortez met, and then for the first time the burghers took rank alongside of the clergy and nobility.<sup>1</sup> This was nearly a hundred years before the De Montfort Parliament in England, and over a hundred and fifty before the summoning of the States' General by Phillip le Bel. From that time the liberties of the several classes in the Spanish kingdoms were secured, and henceforward the kings prior to their coronation took oath "to observe the liberties, franchises, exemptions, privileges, and customs of the kingdom," and "grant to each city, town and borough its charter of confirmation."

In Italy the church used her influence in seeking to preserve peace throughout Europe, as well as in securing the liberties of the citizens of the Papal states. I am quite aware that some of the wars were due to the aggressive policy of some of the Popes, who however were always careful in such cases to justify their measures by some legal claim. There were as many occasions when they acted as arbitrators between contending powers, as there were others where they sought to induce the kings to grant extended privileges to their subjects. Even in her greatest

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1. Du Hamel Hist. Const. de la Mon. Espagne. T. I, p. 175.

arbitrariness the church had respect for the laws, and the Canon law remains to show that she was the great law-giver of the period, while she was careful to base her claims to her territorial possessions on certain legal documents. That these documents were forgeries does not vitiate the fact that she felt the necessity of resting her claims on a legal foundation. After the restoration of the Consular government of the several Municipia of Italy, law was administered with some care.<sup>1</sup> But the struggles between the different republics, which resulted in their subjection to the rule of princely families, affected very prejudicially the proper administration of law, and there was a period of utter confusion, when the rights and privileges of the people were much disregarded.

Returning to a review of the state of affairs in France, the *quarantaine* of Phillip Augustus, which prohibited the execution of private vengeance for forty days, during which the legal courts were bound to take cognizance of any deed of violence, was one of the earlier measures taken for the maintenance of public peace. Phillip, however, was too prudent to at once seriously interfere with the powers of the feudal lords, or abridge their legal author-

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1. Ficker *Forschungen zur Reichs-und Rechtsgeschichte Italiens* B. III, Ch. 45.

ity, yet he established such new laws as the country especially needed. He was unable, however, fully to carry out his purposes, and was obliged to leave much to his successors, Louis VIII. and IX. Yet in the collections of the ordinances of France we find that fifty-two ordinances or official acts dealing with the administration of justice emanated from him. But while he framed new laws he was respectful of the law himself. He sought to base his claims to extended territory on some legal pretext, and even in the case of taking possession of Normandy, he did not proceed against John till he had some grounds for his action. But Phillip was also successful in enforcing his legislation on the Gallican church. In 1209 the Bishops of Orleans and Auxerre refused the contingents which were due for the fiefs, which they held of the crown, and Philip seized their domains, including the revenues derived from them. Pope Innocent III. thereupon laid an interdict upon him, but he braved the interdict, and compelled the bishops to fulfil their duties. Some of the Metropolitan sees fell within a county, and the seigneur sought to bring the archbishop under his authority, but Philip compelled such to submit to his jurisdiction, and the church was in this way brought under the rule of the crown. The reign of Philip Augustus marks a distinct period in the history of France. The royal power rose

over the power of the feudal lords, as well as over the church, and feudal rule gradually gave way to the establishment of central tribunals invested with supreme jurisdiction. Philip had a definite purpose in bringing the several powers of the state under the authority of the crown, and creating a system of laws which should regulate the several orders in the state. France, however, was not prepared for any radical change, and though Philip accomplished much, he did little more than inaugurate a new system of government which it remained for Louis IX. and Philip Le Bel to develop more fully. The reign of Louis VIII. was short and uneventful. He died before Toulouse in the Albigensian war, and left his son Louis to the care of the Queen Blanche of Castile. Few mothers have ever been so careful of the education of their sons as Blanche of the youthful Louis, and he proved himself not unworthy of her care, for very few princes ever succeeded to the throne more imbued with such high principles of morality, with a more keen sense of his responsibilities, or a more conscientious desire to discharge them faithfully. A devoted son of the church, and engaging in more than one crusade in carrying out the church's behests, he yet felt that his first duty was to the state, and he never allowed the church to encroach in any way on the prerogatives of the crown. No prince was ever more

anxious to maintain the rightful administration of the laws, and his keen sense of justice is exemplified in his restoration to the English crown of a part of the territory which had been wrested from King John. The judiciousness of such a measure may be doubted from a purely political point of view, for the provinces thus restored remained discontented, while the holding by England once again of possessions in France was a constant source of difficulty between the two nations. There can, however, be no doubt of the purity of Louis' motives. But perhaps the legal association of Louis rests principally on his Etablissements. There were two forms of law in France, the written law (*Le Loi écrit*) and the customary (*Le loi coutumier*). The written law was peculiar to the south, and was compiled almost entirely of extracts from the Roman codes, while the customary law prevailed in the north, where feudalism was strongest. Customary law rests principally upon precedent, and only after a time does it harden down to written law. The Etablissement of St. Louis was not an original work. It is a compilation of the Coutumes, of the principles and customs of civil and feudal law as they existed in the counties of Touraine, Anjou, and Orleans.<sup>1</sup> It is doubtful if this

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1. Anjou, Maine and Touraine assimilated very closely in their Coutumes, and indeed may be regarded as under one jurisdiction.

compilation is due to Louis, though there is no doubt that it came into use in the later years of his reign, and evidently points to the change which was taking place in the character of French jurisprudence. There are traces of Roman and also Canon law in the *Etablissement*, but M. Viollet, who is our principle authority in any researches on the subject, shows that these are due to a later redaction, and that they are wanting in the earlier manuscripts. He is indeed rather inclined to assign greater importance to the influence of German law. The *Etablissement* of St. Louis became the *Coutume de Paris*, and prevailed for centuries, till indeed it was superceded by the Revolutionary Tribunals, and afterwards by the Napoleonic code, and at the Restoration was only partially restored.

## LECTURE XXV.<sup>1</sup>

### THE PARLIAMENT OF PARIS AND THE ADVANCE OF ROYALTY TO ABSOLUTISM.

It might have been expected that the noblesse of France would have restrained the power of the crown, especially through their connection with the Parliament of Paris. They certainly did not quietly acquiesce in the legal enactments of Philip Augustus or Louis IX., but they were neither sufficiently united, nor did they possess the capacity to oppose the power of princes so able in themselves, and who had already centred a number of interests in the crown. The natural bias of the Conseil and of the Parliament of Paris was undoubtedly towards arbitrary power. The position of the members, which after Philip Le Bel became hereditary,<sup>2</sup> separated them from the other barons, while on them rested the executive administration. On a few occasions they did attempt to exercise their authority in

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1. Books consulted :—The same as for last Lecture, and also *Mémoires du Duc de Saint Simon*, and *Saint Aulaire, Histoire de la Fronde*.

2. In case a vacancy the judicial offices was some times acquired by purchase, so low had it fallen. It had ceased to be an honourable distinction.

opposition to the king, but so unsuccessfully that it only served to show them how unable they were to control the royal power. When Francis I. was a prisoner at Madrid he signed a treaty which was very humiliating in character, and the Parliament unanimously refused to register it, maintaining that no king of France had a right to bind himself and his people to such a dismemberment of the kingdom. Francis was perhaps only too glad to have such good ground for repudiating an unwelcome engagement. On this occasion the Parliament was successful in its refusal to indorse the action of the king, but only because his personal wishes largely coincided with its own. On another occasion when it attempted to adopt a similar course, now however in direct opposition to the king's wishes, he indignantly resented its intervention, and carried out his own purposes. From that time, till the Parliament lost every vestige of power under Louis XIV., there was a series of conflicts between it and the crown. At the close of the war of the Fronde the Parliament assumed a haughty tone, and opposed the government of Mazarin and the Queen Regent, Anne of Austria,<sup>1</sup> but Turenne and the people of Paris, who began to fear the rule of a body of official and hereditary magistrates more than that of Mazar-

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1. Sismondi Hist. de Fr. T. XXIV. Ch. 25. Saint Aulaire Hist. de la Fronde. T. II. Ch. 18.

in, refused to acknowledge its authority. From that time the power of Parliament was much diminished, and only once again did it attempt to assert its authority. In 1673, when the expenses of the court as well as of the war had become very great, and the Parliament dared to remonstrate with Louis XIV., he informed them that henceforward "they should prove their submission by the enregistration pure and simple of the laws which should be submitted to them." Aguesseau adds: "The remonstrances which the Parliament made on this occasion were regarded at the time as the last cry of expiring liberty." In fact since this declaration the remonstrances were not only deferred, but not even resumed. After this the registration of the royal edicts was a mere matter of form, and with this act of Louis depriving the Parliament of all power, the nobles lost their last hope of restraining the crown in its advance to absolutism.<sup>1</sup>

In reviewing the growth of the absolute power of the French crown I would remind you once more of the weakness of the throne when

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1. Saint Simon tells us that just before his death the King sent for the President and Procurier General and handed them his will with these words "Messieurs, c'est mon testament. Je vous le remets pour le garder au Parlement, à qui je ne puis donner un plus grand témoignage de mon estime et de ma confiance que de l'en rendre dépositaire."

Hugh Capet became king in 987. From that time till the accession of Philip Le Bel there was a period of three hundred years, and during that period there had been no great effort on the part of the throne to assume despotic power. It was under Louis VI. that the Communes, or at least many of them, gained their independence. Philip Augustus began to reconstruct the nation by his great accession of territory, by his encroachment on the independence of the Communes, by the splendour of his court, by the curtailment of the privileges of the church, by his attempts to reduce the jurisdiction of the kingdom to royal authority, by his encouragement of civilization and culture, and a sentiment of nationality. St. Louis continued the work begun by Philip by imposing on his government the character of piety, of respect for right, and the love of justice and of the public good. So far, however, as we have observed the progressive development of royalty it has shown no approach to despotism, but on the other hand it was not in any way a limited monarchy. There was no institution which might be regarded as a counterpoise in the form of either an aristocratic or popular assembly. There was no element of moral order, and no principle or powerful idea which was generally admitted, and which might assign limits to the royal power. It is true that the feudal lords were rivals, who might have

been regarded as limiting the authority of royalty, while the church also exercised considerable influence in the same direction, but these powers were gradually overcome, and we find no limits of a constitutional character, and no national doctrines or institutions, which might systematically have limited the sovereignty of the French kings. Still it cannot be said that there was any inclination towards despotism, and it would be unjust to say that royalty had striven towards absolutism. It had laboured to establish order, peace and justice, and to elevate society, but there was no manifestation of arbitrary government. Still the germs of absolute power were there, and after Louis IX. these began to develop themselves, though no change actually took place till the reign of Philip Le Bel. In no kingdom did the personal character of the monarch have greater influence than in France. In the reconstructive nature of Philip Augustus, and in the respect for justice and high morality which marked the rule of St. Louis we see the character of the men, and of the power which they wished to exercise. Neither of these kings can be charged with selfishness, or of seeking the mere accomplishment of their own will, yet from the fact that there were no systematic institutions which might restrain royalty in its progress towards absolutism the direction which

Philip Augustus and Louis IX. gave to royalty, however unwittingly, was certain, sooner or later, to establish the arbitrariness of the crown. Philip Le Bel lacked that high sense of morality which distinguished Louis IX. He had little personal virtue, and in his case we find that selfishness and that miserable personality out of which most frequently despotism is developed. Philip Le Hardi had added some important fiefs to the royal domain, principally through his marriage with Jane, the heiress of Raymond of Toulouse. But there were still five great fiefs independent of the French crown, Champagne, Guienne, Flanders, Burgundy, and Brittany. Champagne fell to the crown through the marriage of Phillip Le Bel with the heiress of Champagne. Guienne and Flanders, as also the counties of Angouleme and La Marche were acquired through intrigue, and the acquisition of these fiefs added very much to the power and influence of the crown.

It is, however, in the character of the ordinances which Philip Le Bel issued that we may see the despotic power which the crown began to exercise. We have alluded to the ordinances which were issued by Philip Augustus, and to the Etablissement of Louis IX., but the ordinances of Philip Le Bel were of a character essentially different. They are very numerous. A collection in the Louvre contains

no less than three thousand, five hundred and forty, and they one and all show the personal interference of royalty in the general affairs and interests of the kingdom. Philip levied subsidies on his own responsibility; he issued on his own authority certain immunities and exemptions; he forbade the exportation of corn or wine and other provisions; he regulated the duties and functions of officers throughout the kingdom; he first gave a precise organization to the Parliament of Paris, and appointed those who were to have seats there; while he laid down laws for the regulation of the clergy, and confiscated the domains of bishops and abbots who without his permission absented themselves from the kingdom. This is the first time that we observe the claim of loyalty to mix itself up with all things pertaining to the general welfare, and to issue ordinances solely on its own authority, without the consent or council of the barons, or of any of the great possessors of fiefs. In the ordinances of both Philip Augustus and Louis IX. we find it constantly stated that they were issued with the consent, or with the advice of his councilors, the barons and bishops of the kingdom, but all the legislative acts of Philip Le Bel emanated from himself alone, and bear evidence to that intolerable egotism which is the fruitful source of despotism. It is when men centre all things in their own personality, and are unrestrained by

any high sense of morality or of conscientious duty, that in the exercise of power they become despotic, and such was the character of Philip Le Bel. In the reign of Louis X. (Le Hutin) there was a reaction against this despotism of Philip, and the feudal aristocracy attempted to regain its independence. Then succeeded the English wars, during which a long list of weak kings occupied the French throne. But in 1461 Louis XI. succeeded to his father, Charles VII. Louis was a king of great determination and power. He added Burgundy to the French crown. The Duke of Burgundy had been the first peer of France, and all the efforts of the great vassals found in him their natural support, and his overthrow seemed to take from the vassals their last hope of resisting the authority of the crown. The royal power, now without a rival, became conscious of its position, and we find it in the full exercise of its assumed prerogatives, carrying out the laws, compelling obedience, and concentrating in itself the interests of the nation; terrible with the very vigour and suddenness with which it punished; everywhere present, and firmly established in itself.

But we must not forget that while Philip Le Bel was the first king to really assume absolute authority he was also the first king of France to summon to a States General deputies from the

towns, members of the Tiers Etat, a body which was essentially democratic. He had taken a step which might have resulted in a constitutional government and have established a limited monarchy.

There are acts of home legislation, while there are others which concern foreign relations. The question of peace and war and negotiations with foreign powers could not be decided by the king himself. In such important matters he could not do without the support of the nation. In earlier times the king had consulted with his barons and other notables of the kingdom,<sup>1</sup> but with the growth of the towns it became necessary to consult them also, for they formed a powerful element, especially in regard to wealth, and must afford the principal material for carrying on a war both in men and money. In his negotiations with foreign powers the king might feel that he needed the moral support of the nation, and so Philip Le Bel in his quarrel with Boniface VIII. convoked the States General in 1302 to give him that support. In the general government of the kingdom, however, Philip acted on his sole authority, and when he or any of his successors called together the States General the meetings were brief and accidental, and had no legislative power.

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1. St. Louis had called together deputies of the towns to deliberate with him on certain legislative acts, but not as a regular constituent assembly.

We cannot follow the changes which took place under Charles VIII. or Louis XII., or under Francis I. and Henry II., III., and IV. Louis XII. was of a lofty character, and was much more liberal than his immediate predecessors. He gained a predominant influence in Europe, and when he died left France in prosperity and extended power and influence to his successor, Francis I. The Reformation and the civil and religious wars which broke out tended to increase the royal power, though for a time the family of the Guises exercised an influence which rather over-shadowed the authority of the crown, and it was not till the reigns of Louis the Thirteenth, the Fourteenth, and the Fifteenth, that the crown assumed its most despotic character. But it was then, too, that it reached its greatest splendour. The long reign of Louis XIV. was the period when France arrived at its highest glory, when the prestige of its name awed Europe; when its arms were everywhere victorious, and its court was in its utmost brilliancy; when art and literature showed themselves in their most attractive forms; but when at the same time the sole authority of the king was the supreme law; when every vestige of freedom was destroyed, and when despotism assumed at once its most attractive and its most dangerous features. The brilliancy of the court only hid its inner corruption, for religion and

morality were forgotten, and the church exercised no influence, but fell into the prevailing evils. Despotism in its most absolute form was, however, mitigated by an advanced culture, and by the prudence and perhaps naturally good inclinations of the reigning prince.

But the evils of a despotism cannot be wholly glossed over. They will come to the surface, and bring about too certain results. The passions of men will rise against oppression, even though it may assume the most amiable forms. The absolutism of successive reigns, though veiled under the attractions of the court, yet certainly produced the French Revolution with its unmitigated horrors.

## LECTURE XXVI.<sup>1</sup>

### THE STATES GENERAL AND ITS INABILITY TO CURB THE ABSOLUTISM OF THE THRONE.

I have traced the advance of the royal power towards absolutism, and pointed out why neither the Noblesse nor the church, nor indeed the Communes, were able to stay that progress. There was, however, another element in France which might have been expected to offer some opposition to the encroachments of the crown. We have seen the rise of the towns in France and their acquisition of some degree of independence. Since the period of the Crusades these towns had increased in wealth, in educational advantages, in commercial industry and manufactures, as well as improved in architecture, and appreciation of the fine arts. The French nobility had always been a military class, or rather indeed caste, that had looked on

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1. Books consulted :—*Essai sur l'Histoire de la formation et des Progrès du Tiers Etat.* par Augustin Thierry. *Histoire des Etats Généraux*, par M. Geo. Picot. *Démocratie en France au Moyen Age*, par M. F. T. Perrins. *Histoire de France*, par M. Lavissee, et Ch. V. Langlois T. III, pt. 2, et par M. Coville, T. IV. pt. I.

all below them as pariahs, and they maintained an exclusive separation from the Bourgeoisie or the Roturiers. They became in some instances the patrons of the fine arts, but generally they lived isolated in their chateaux, or when they did go up to Paris, they formed the Haute Societé, or the Bon Ton of that gay and dissipated capital. But they did not take any part in politics, and when political offices were formed, they made no efforts to secure them, and hence all these offices came to be filled by members of the Tiers Etat. No doubt one of the principal reasons why the French nobility did not attempt to secure these offices, or rather why they failed to retain their position, or make their influence felt, was that they did not seek so fully as they ought the advantages of education. I am not aware of any great name from among the nobility that took any position in literature. It is indeed only within the last century and a half that we find any representatives of the old nobility taking a prominent place in literature. It was the plebeian orders that on recommendation of university honours supplied all the positions of importance in the state, and became Chancellors, Secretaries of State, Attorneys or Solicitors-General, or Ministers of Finance. All such offices were filled by educated Bourgeois, who came to be called Hommes or sometimes La Noblesse des' Robes Longues. The only offices

that were still exclusively retained for members of the nobility were the Governorships of provinces, of cities and fortresses, positions of military and naval rank, offices in the royal palace, and émbassies; and to the end of the fourteenth century the Noblesse still held the majority of the offices in the Conseil of the state. On the other hand the principal offices in connection with the law courts were now held by members of the Bourgeoisie, and this gave to them a position of nobility, though it was not hereditary. The increase in wealth and importance of the towns made them a most influential element in the state, and there was a growing feeling that they should assert a claim to take part in national legislation. By their enfranchisement they had become an integral part of the state, and as they now contributed a large part of the revenue so it seemed only proper that they should be consulted in any money grant, or subsidy to the crown. This is a principle which has always been recognized, and its legitimate result is to place in the hands of the people's representatives, in a national assembly, not merely the financial but also the legislative control of the state. It has produced such an effect in England, where it has placed the supreme power of the British constitution in the House of Commons.

I shall now attempt to show that, though the

principle was acknowledged in France, it yet failed to be attended by its natural results, and that instead of exercising any control over the French government, the States General became simply a tool in the hands of an absolute and irresponsible monarchy. I have already noticed that from an early period in the thirteenth century the king seems to have summoned convocations of the good men of the cities to ask their advice, and to receive their assistance. These convocations however were isolated, and were not representative in their character. They excited no interest, and no importance was attached to them. The increase of expenses, however, and the wants of royalty, made it necessary to call fresh means of administration into existence, and in the fourteenth century this led to more frequent convocations. On the occasion of the earlier convocations, there was no conference with the other two estates of the lords and clergy. In the third year of the fourteenth century Phillip le Bel, with the consent of his Conseil, imposed a tax on his subjects from which even the clergy were not exempt. To repel this encroachment on the temporalities of the church, Pope Boniface VIII. issued a Bull forbidding the French clergy to pay the exactions required by Phillip. Phillip retaliated, forbidding the payment of the customary dues to the Papal See. Boniface thereupon summoned

a council to advise him how best to repel the encroachments of the secular power. Phillip in his turn summoned the barons, the clergy, and the Commons of the realm, to send deputies to meet him at Paris on the 10th April, 1303, and the three estates of France were then for the first time convoked in the Cathedral at Notre Dame in Paris. The two estates readily acquiesced in the acts of the king in his opposition to the Pope, and the clergy, after a short delay, gave in their consent also. These first States General of France were thus convoked for a special purpose, and as soon as the object was gained were dismissed. This great constitutional innovation attracted little attention. No contemporary seems to have realized the importance of the measure, but it was really a first step in the introduction of constitutional government into France, though unfortunately it was not followed up. It was indeed an acknowledgment of the growing power and influence of the Tiers Etat, and if this estate had only made a proper use of the advantages which it had gained, it might have acquired the principal place in the government of France, and a power equal to that exercised by the British House of Commons. The question naturally forces itself upon us, how it is that it did not acquire such a power, but became entirely subservient to the French crown. In 1304 the Flemings resisted the

usurpation of Phillip, and asserted their independence. Ten years later (1314) Phillip resolved on re-annexing the county of Flanders, and to gain funds for this purpose he again summoned the States General to Paris. The account of these States General is bald and brief, but is interesting as recording the first instance of the acknowledgment of the rights of this body to authorize the imposition of taxes. There was, however, a striking informality in the way in which the function was exercised, and the action raised a feeling of discontent throughout France. Though the Privileged orders were present at these States General, they do not seem to have been consulted in regard to the money grant, for it was made wholly by the deputies from the towns. The deputies in the States General did not fix the mode in which the aid was to be levied. This seems to have been intentional on the part of the king, and a royal ordinance was promulgated which instituted a tax of six sous on each pound of merchandise, payable by both seller and buyer at the time of the sale. Such a tax became very unpopular, and Phillip sought to lay the entire blame on the deputies from the towns in the States General. This was one of the last acts of that unpopular prince, and served to increase the hatred which throughout his reign he had incurred. This case is but an example of the irregularities of procedure in

the States General, and shows how the French kings played fast and loose with these assemblies. Throughout the whole history of the States General of France there was an utter lack of confidence, not only in the king but also between the several orders, and where there was this lack of confidence it could scarcely be expected that the States General could achieve any important results. In the reign of Louis X. it was distinctly recognized by the king, for himself and his successors, that in future, they would not levy any tax on the kingdom without the consent of the three orders in the States General, and also that the three estates should see as to the expenditure of any grant. Again in the reign of Philip of Valois (Philip VI.), on the occasion of the meeting of the States General in 1338, he conceded to that body the full right to vote any impost without the interference of the crown, and this occasion was in later times more than once referred to as a distinct acknowledgment on the part of the crown, of the principle that the voting of supplies rested with the States General. Louis X. went even further, and promised not to debase or in any way interfere with the coinage, not to levy extraordinary taxes, nor to subject any one to torture, unless the presumption of a capital offence was of the strongest character. The abrogation of these privileges, on which the

crown had so often acted, was scarcely less important than the acknowledgment of the sole right of the States General to levy taxes. The modes to which the king had repeatedly had recourse had been so arbitrary and so oppressive that the change of these modes, and the substitution of a properly fixed organization in place of the arbitrary and capricious measures, which had hitherto prevailed, was calculated to bring about a great improvement in the political constitution of France, just as similar action did in England. But the circumstances were essentially different. The English kings never had acquired the arbitrary power which the kings of France had come to exercise, while the local courts had familiarized all the various classes in England with the organization of a limited and a representative government. The education which had been received through participation in the judicial and governmental functions of the lower courts prepared the English House of Commons for taking its part in the legislative and fiscal administration of the kingdom.

In France the *Tiers Etat* exercised very little independent power. The feudal lords, and afterwards the kings, had maintained almost entire control in all local affairs. Now, however, a most important epoch had been reached in the history of France, and had the States General been able to take advantage of the privileges

they had won, there is no doubt that a constitutional government would have been established. But the want of preparation, and the lack of harmony between the several orders, with the essential divergence of their interests, prevented their seizing their opportunities. The whole movement was spasmodic, while such a change requires time to gain force and influence.

Philip of Valois died in August, 1350, and was succeeded by his eldest son John, a valiant and loyal knight, but a frivolous, thoughtless, prodigal, and obstinate prince, perfectly ignorant of the practices, and still more of the reasons and conduct of government. He succeeded to a depleted treasury, and resorted to the old capricious modes of raising money. He debased the coinage, confiscated the goods and securities of foreign merchants, and stopped the payment of the crown's debts, while he also granted privileges to certain localities, on the payment of subsidies. This irregular source of revenue was soon exhausted, and the king's wants became more oppressive and urgent, on account of the war with England.

After the battle of Crecy in 1347, there was a short cessation of hostilities, but in the beginning of the following year the struggle seems to have been animated by new vigour and bitterness, and it became necessary to appeal again to the nation for support in the

terrible trial. John convoked at Paris, for the 30th November, 1355, the States General of the Langue d'oïl, and on the 2nd December the prelates with their chapters, the nobles, and the deputies from the towns, assembled in the great chamber of parliament. Pierre de la Forest was the king's chancellor, and in his name addressed the assembly, asking their aid in the crisis, and promising reform of grievances.

Jean de Craon, Archbishop of Rheims, replied in the name of the clergy; the Duc D'Athènes for the nobles, while the deputies chose Etienne Marcel, Prevot of the merchants of Paris, to express their views.

The session seems to have been a short one, lasting about a week. On the petition of Et. Marcel the three orders appear to have met together. They accorded the king £2,000,000 (50,000,000 livres) to support an army of twenty thousand men. They defined the mode in which this sum was to be raised—by a tax to be laid on all the necessities of life, pro-rata on all classes of society without any exemption, and a tax on salt. The attitude of these States General was bold. They took advantage of the straits in which the king was placed, while the influence of the Tiers Etat would seem to have been predominant, for the tax was laid on all the three orders. But if the deputies realized on this occasion something of their power, they at the

same time betrayed their inexperience, for when they came to levy the tax, in the form proposed, they found it almost impossible to do so, and at the same time it very seriously affected and almost closed the markets, while the tax on salt was also very unpopular. In many places the opposition to these taxes was very determined, and throughout the north, especially in Normandy, took a violent form.

The States General had assumed the right of adjournment, and met again in Paris on the first of March. On the very opening of the session, the assembly divined the feeling which existed in the provinces. Neither noble nor bourgeois appeared from Normandy, or Picardy, and it was determined to remove the obnoxious taxes, and to substitute one on revenue. The change was not made any too soon, for *emeutes* had already broken out in several small places, attended with fatal results. Affairs were becoming most serious in France, and the assembly could not foresee what turn they might at any moment take. The States General therefore only adjourned to May, and met for the third time on the sixth of that month. The subsidy voted in March had not met the hopes of the deputies, and the dangers increased with the disorder of the finances, and the apparent impossibility of applying a remedy. Nevertheless two new subsidies were voted, the

one returnable on the 24th June, and the second on the 15th August. In making this further grant the assembly re-asserted the privileges which had been previously gained. These several sessions of the States General, in January, March and May, may be regarded as one, for they had the same object in view, and the last two merely supplemented the action of the first. We, who can calmly consider the action of past ages, may see in these assemblies of the States General, the germs of representative or constitutional government, and important steps in the progress of liberty, but unfortunately people are slow to appreciate the result of their own actions.

The States General of 1355-6 met for a particular purpose; they do not seem to have had any other object in view, and they failed to take advantage of the position they had gained. When they separated in May it was agreed that they should meet in the following November. But on the 17th September John lost the battle of Poitiers, and was himself taken prisoner. The French army was completely destroyed, and the English were in the very heart of the kingdom. There were neither soldiers nor money at the disposal of the government, and in this dire necessity, the States General of the Langue d'oïl were called for the 15th October. It was a larger meeting of the States General than any that had yet been held. There were 800 mem-

bers. The number of the deputies from the towns exceeded 400. The clergy were complete in their order, but the ranks of the nobles showed many vacant seats; their former occupants were either lying in the field of Poitiers or were prisoners in the hands of the English.

The chancellor Pierre de la Forest opened the session by a speech, in which he exposed the evils which had befallen France, and he asked the assembly to aid the Dauphin as regent by their councils in the grave position in which the kingdom then was. The large number of members seems to have led to confusion, and time, so precious under the circumstances, was rapidly passing. It was therefore determined to appoint a large commission of eighty members to consider the whole matter, and to report as speedily as possible to the full assembly. The report of the commission was adopted by the Estates. It was plain and fearless in its tone. It was no time for mild measures, and the Estates seem to have risen to the importance of the occasion. The report strongly condemned the conduct of the king, and attributed to him the responsibility for the evils which had befallen the kingdom. It demanded the discharge of a large number of the king's household, and of the officers of the state, whom it regarded as his evil councillors. The name of Pierre de la Forest, the Chancellor, stood first on the list of the pro-

scribed, and then followed that of Simon de Bucy, the President of Parliament, and Master of the Mint, with others of scarcely less importance, twenty-two in all. The Estates were prepared to arraign these men, and if found guilty they were to be punished, but under any circumstances they were to be removed from the king's councils, and should forfeit their offices and property. The Estates further stipulated that the king or regent should take as his councillors twenty-eight delegates, twelve from the nobles, twelve from the bourgeois, and four from the clergy. These should be near the king's person and should exercise a general control over the affairs of the kingdom. This was a most important step in the direction of responsible government, and certainly ought to have led to most important results, but the Estates did not realize the bearing of their own action. The Estates further demanded that the king of Navarre, the son-in-law of King John, who was in prison in France, should be released. Charles the Bad enjoyed no very enviable reputation in Europe. He was a dangerous disturber of the public peace, but he had endeared himself to the people by identifying himself with the late opposition to the taxes, and had stirred up hostility against the government. The Estates required a reply from the Dauphin to their demands before they would proceed to consider

the exigencies of the kingdom. The Dauphin was astonished at what he regarded as the exorbitant demands of the Estates, and sought delay, hoping for some expedient to relieve him from the humiliating position in which he felt himself placed. There was much to induce the Dauphin to seek delay. At the same time that he had convoked the Estates of the Langue d'oïl, he had also convoked those of Langue d'oc, and while the Estates of Paris were making their demands, he was gratified with the news that the Estates at Toulouse had voted a levy of 50,000 men-at-arms with an adequate subsidy. He had also opened negotiations with Pope Innocent VI. and with the Emperor Charles IV., imploring their intercession in securing the restoration of peace with England. The gloom seemed penetrated by some gleams of hope, and the Dauphin persisted in delay, trusting that the new prospects would bring him some relief.

It cannot be doubted that the Estates had overstepped their legitimate province. Liberty is the growth of centuries, it is the heritage of ages of struggle, and it is only compatible with a large degree of enlightenment and culture. The Estates of 1356 had at one bound accomplished a great revolution, but it was a revolution for which they were wholly unprepared. It was not liberty which would have been gained. It was rather the substitution of the unlimited and arbitrary

power of the Estates, for the unlimited and arbitrary power of the monarch. The object at which they aimed was not constitutional government, it was simply the subjection of the crown to the dictates of a body of men who for the first time had tasted the sweets of power, but had not yet learnt the proper exercise of power. The Dauphin called a meeting of his Conseil, and asked advice in the emergency. Feeling ran high, but wisdom prevailed, and a commission composed largely of princes of the blood, was appointed to confer with deputies from the Estates. The Dauphin and the Conseil anxiously awaited the result of the conference. The Estates, however, were immovable and the Dauphin and Conseil felt it necessary to give way. Paris, whose views entirely accorded with the views of the Estates, was agitated, and a civil war was threatening to add its evils to the horrors of the English invasion. But now that the demands of the Estates had been granted, arrangements were completed for the re-opening of the session. A few days before this event, however, the Dauphin changed his mind. He thought of calling together the several provincial assemblies.<sup>1</sup> Summonses were accordingly is-

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1 The isolation which grew out of the feudal system continued to exist down to the close of the 18th century, when it was put an end to by the great revolution. The several counties or departments had retained some measure of judicial administration, they had their own Coutumes, and their respective parliaments and Conseils.

sued, and some of these assemblies met, but it soon became evident that the subsidies gained by this means were too small to be of any importance.

The temper throughout the provinces was very much the same as at Paris, and discontent was general throughout France. One hope still remained to the Dauphin, and on the 5th December he left Paris to meet his uncle, Charles IV., of Germany, and again solicit his intervention. He left the Estates firm in their opposition, and Paris was in a state of slumbering revolution which the slightest spark might inflame. In the month of August (the battle of Poitiers was on the 17th September) John had issued a debased coinage, and though he had promised to recall the issue, and never to repeat it, it had not been recalled, and now, in the straits in which the Dauphin found himself, he proposed to throw off a coinage still more debased, and five days after his departure from the capital, the new issue was put in circulation. The irritation of the deputies was extreme, and the people refused to accept the debased money. Et. Marcel hastened to the Louvre and urged the Count of Anjou, the brother of the Dauphin, who was acting for him during his absence, to withdraw the issue. The count hesitated, and not until the third day, when Paris was almost in a state of emeute, did

the young prince accede temporarily to the remonstrance of Marcel.

On the return of the Dauphin on the 14th of January, he found the capital very much excited. For the first time the popular leader was supported by the manifestation of popular force. From that day the resistance to the crown, which had hitherto been pacific and legal, though scarcely constitutional, was changed into a violent struggle. The Dauphin did not realize the state of affairs; one of two things was alone possible, either to enter on the struggle with force or to make concessions. Charles was not prepared for the one, or willing to concede the other. He once more tried to affect a compromise, and appointed a meeting with Marcel and his party. Marcel appeared at the rendezvous accompanied by a large body of Parisians in arms. The envoys of the Dauphin urged the withdrawal of the opposition to the new coinage, which Marcel and his party refused, and the conference broke up. This was the signal for more active measures. Paris flew to arms, and threatened to put to death the conseillers of the king, whom the States General had before proscribed. Now at last the Dauphin began to realize the danger. To the people, angry and ignorant, he could only oppose force, but he had no force at his command, and the Louvre was without protection. On the 20th

there was another meeting of the envoys of the Dauphin and Marcel with the principal citizens of Paris. The Lieutenant of the Dauphin expressed the willingness of the prince to forget the past, and to call a meeting of the States General whenever Marcel and the popular party wished. The Dauphin also promised to remove from his Conseil the officers who were obnoxious to the States General, and also to issue no more of the debased coinage. Thus for the second time the throne was obliged to yield to the popular wishes. The Estates were convoked for the 5th February. Each day of the interval, however, was marked by some event which showed the spirit of the people, and the imperious daring which Marcel was beginning to assume. At the opening of the assembly so few of the nobles were present that it seemed to show that there was some revulsion of feeling on their part against the growing popular movement.

Mons. Le Coq, the Bishop of Laon, in the presence of the three sons of the king, read several charges against the administration.<sup>1</sup> When Mons. Le Coq had finished the Grand Remonstrance which he presented in the name

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1. There is no doubt that M. Le Coq as well as several of the councillors were in league with Charles of Navarre and that through them he was made aware of what was passing at court. Jean de Picquiny, a noble of Picardy, was also on friendly terms with that prince.

of the clergy, Jean de Picquiny in the name of the nobles endorsed the address, while Etienne Marcel and Nicholas le Chanteur did the same in the name of the Tiers Etat. The Estates then proceeded to vote an army of 30,000 men with money for their maintenance, and for once at least the nobles and clergy agreed to tax themselves. They granted a fifteenth of their income, and a commission of thirty-six members was appointed to administer the affairs of the kingdom. Matters now seemed to promise a season of peace.

In the meantime a truce had been arranged with England, and John was no longer a prisoner, though he still remained for some time in England. He was aware of what was taking place at Paris, but he did not understand the import which affairs had assumed. He wrote to Paris protesting against the conduct of the States General, recalling the concessions of the Dauphin, and ordering the re-issue of the debased coinage. The news of this unwise course taken by the king again disturbed the public mind. Paris was once more in insurrection. The mob took possession of the Louvre, where they retained the Dauphin a prisoner, and compelled him to rescind his father's unwise acts. The States General were again summoned for April, when a second subsidy was granted. But the thirty-six commissioners to whom the

administration had been entrusted had begun to usurp too much power, and their arbitrary conduct served to alienate a large part of the nobles and clergy, who seemed to feel that the despotism of a democracy might be as oppressive and more dangerous than that of the crown. The Dauphin now visited the several departments, hoping once more to obtain subsidies from the provincial assemblies. He returned to Paris in October, and another meeting of the States General was called for the 7th November. One of the first acts of this States General was to insist on the release of Charles of Navarre.<sup>1</sup> Charles made his entry into Paris on the 3rd December, and at once sought to ingratiate himself with the people. In the meantime the Dauphin had become aware of a growing reaction in favour of the crown. While on his visit to the departments he had sought their sympathy, and had endeavoured to stir up a feeling of opposition to the popular movement in Paris. On his return therefore to the capital he began to resume something of his earlier haughty tone. But he miscalculated his strength. The reaction had not gone so far as he thought, and the aid from the provinces was not to be depended on. The States General were again summoned for the 14th January (1358), but the meeting was adjourned to the 11th Feb-

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1. Charles was a prisoner in the chateau of Arleux in Picardy.

ruary. The treasury was empty, and the continued prorogations had not tended to fill it. It was difficult to see to what measures the States General might have recourse, for the country was impoverished. In these circumstances the States General resorted to the very expedient they had all along strongly condemned. They still further debased the coinage. This expedient though promising was disastrous. It showed too plainly that absolute power in whatever form it may be, whether in the hands of a monarch or of a popular assembly, must lead to evil results in the absence of any counterpoise. The state of affairs in Paris was becoming more and more alarming. The king of Navarre had come to the capital, and had excited the people by his seditious harangues, and though he did not stay for any length of time he yet did a large amount of evil. Marcel too, in identifying himself to a large extent with the king of Navarre, had appealed to the passions of the lower classes, and all thought of moderate political reform gave way to extreme measures. A treasurer of the Dauphin was murdered in the streets of Paris, and the punishment of the criminal furnished an excuse for a violent outbreak, which was fomented by Marcel. The mob under his direction broke into the chamber of the Dauphin, and in his very presence struck down the Marshal of Champagne, and Robert of Clermont, Seneschal

of Normandy, two of the Dauphin's conseillers. The Dauphin, in terror, threw himself on his knees before Marcel, imploring his protection, and Marcel, placing his own *chaperon bleu et rouge* on the prince's head, led him out from the excited multitude.<sup>1</sup> The accomplices of Marcel dispersed through Paris exciting the people, and seizing some of the members of the States General compelled them to condone their excesses and crimes. On the pretext of again meeting a provincial assembly, the Dauphin escaped from the capital, and summoned a meeting of the States General of Champagne. The attendance was nearly full, and was a success for the Dauphin. He felt so encouraged that he now called a meeting of the States General of the Langue d'oïl at Compiègne. Here it was still more evident that a reaction had set in. These States General accorded to King John a sum of money to pay the debts which he had contracted in England, while the feeling was decidedly in favour of the Dauphin, and strongly opposed to the violences which had been resorted to in the capital. The absence of the Dauphin and the assembly of the States General at Compiègne was calculated to increase his unpopularity at Paris, while in many of the departments there was a growing feeling of discontent. The evils

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1. This was the first time that the revolutionists in Paris adopted that symbol.

of war and the exorbitant taxes, consequent on war, had impoverished the peasantry, and ~~emeutes~~ *émeutes* broke out in several places. The French peasantry have always been regarded as of a most peaceable character. It was said that they would submit to anything, and as expressive of this they received the sobriquet of Jacques Bonhomme. They showed, however, that there is a limit to submission, and they now rose against their seigneurs. They wandered about the country destroying the castles, often putting their inmates to death. Rapine and murder marked their progress. Naturally these revolutionary movements without the capital were associated with those within.

But the whole of these strong measures of the democracy, whether in the States General at Paris, or among the peasantry throughout France, convinced the other parties in the state, the nobles and clergy, of the necessity of combining for the support of royalty against the excesses of the democratic party. The nobles united their forces, and at the cost of much bloodshed succeeded in stamping out La Jacquerie. Even in Paris the reaction had already begun. The royalist party was gathering strength, and on the night of the 1st August, 1358, Marcel was killed as he was about to open the gates to Charles of Navarre, whom he proposed to make king of France. By this

premature strife for power royalty was thrown back on the nobles, or rather on the privileged orders, and the interest which had at one time existed between the royal power and the Tiers Etat became more and more separated, and the history of the next two centuries presents continual encroachments by the crown on the rights of the people, and a growing tendency towards the centralization of power, while on the part of the people there were struggles, but vain struggles, for fuller representation and larger participation in the government.

In considering the States General of the fourteenth century, we cannot but see that neither they nor Charles V., whether as Dauphin or king, rose above the level of their time. The conflict between them was conducted in a spirit which on either side was equally narrow minded. The Tiers Etat, whether in the States General or as the Bourgeoisie of Paris, seemed to think that the acquisition of power by the democracy must increase their own strength and resources in proportion to their success in diminishing the power of the crown. They did not understand that each member of the state is directly interested in the support of the legitimate authority, that the body politic must be a united body, affording to each part its legitimate influence. It has always been the great evil that neither the crown nor the democracy of France

has ever contemplated society as a sacred institution to be approached with reverence, and on which the rude hands of passion or ignorance cannot be laid with impunity. The several powers have only learned too late that the vulgar talent, which detects and censures the errors of rulers, is very different from the noble talent which discerns and knows how to preserve the path of safety, and true wisdom in administration. The States General proved themselves as unskilled financiers, and as unsuccessful administrators as either John or Charles. The people were more likely to forgive the inexperience of youth, or pity the misfortune of exalted birth, at the same time as they revered the descendant and representative of a long line of kings, than they could the blindness and excesses of the States General and their commissioners. The better classes despised the incapacity and hated the insolence of a body of reckless and arrogant innovators, and the royal despotism of after years could have had no more vigorous support than the remembrance of a revolution so futile in its results, and conducted by leaders who proved themselves so utterly incapable. A line of kings, such as Charles VI. and Louis XI., succeeded to the French throne who, whatever their other failings and weaknesses may have been, yet appear to have been actuated by the one

great object of elevating the crown at whatever cost.

Under Charles VIII. the influence of the Tiers Etat again made itself felt, and the States General of 1484 were perhaps the most liberal and the most memorable in the history of France. The deputies who represented the Tiers Etat were of a class which showed the great improvement that had taken place in the French bourgeoisie. Only since the restoration in the last century has there been seen such a large number of learned men and authors as sat in the States General of 1484. But the hopes of a better state of things to which that assembly gave rise were crushed out by the events of the sixteenth century. Had the movement in 1357, under Marcel and Le Coq, showed anything of the wisdom and temperate spirit of the States General, which met at Rouen in 1484, the rights of the people might have been secured and a constitutional government been established in France. But the results of the revolutionary spirit of the earlier period convinced the nobles and clergy, as well as the better class of the bourgeoisie, of the necessity of maintaining the monarchy at any cost, and they lent it all their influence in opposition to the masses of the people. But from the earliest of these struggles of the French people with royalty they strove, not so much for civil liberty, as for equality. For

the next seventy-five years after 1484, France was disturbed by foreign and civil wars, and during that long interval the States General did not meet. The king exacted his own imposts, or when necessary convoked provincial assemblies, which furnished him with the requisite authority. The religious feuds in France for a time changed the relations which had existed between king and people. The influence of the church was too strong for any widespread adoption of Protestant opinions. Nevertheless the Protestant party, with its noble, large hearted and able leaders, the Turennes, the Condes, the Colignys and the Montmorencys, made itself important, and was much dreaded by the crown and church. The church therefore sought to strengthen its influence with the lower classes, and through its influence with these classes it succeeded in uniting them with the crown in extirpating Protestantism, and we have every reason to believe that through that fanaticism which the church had excited, the people very willingly took part in the sad massacre of St. Bartholomew. During the great confusion which marked that period the States General met more than once, but they had fallen almost entirely under the influence of the Guises. To Henry III. that influence became at length intolerable, and at the meeting of the Estates at Blois in 1588 Henry managed by means of hired assassins, to rid himself of both

the Duke and the Cardinal of Guise, and at the same time he succeeded in ousting their partisans in the States General. Having accomplished his purpose, and jubilant over his release from the haughty interference of that hated family, Henry presented himself to the people with the exclamation: "At length I am king." The States General which were sitting at the time, continued a little longer in session, but now in as humble subjection to the king as they had been to the Guises. At length the session was closed on the 15th January, 1589. "We parted," says the orator and memorialist, Bernard, "with tears in our eyes, bewailing what had passed, and looking forward with terror to what was yet to come, and observing that in our separation, France had an evil augury that she was herself to be torn in pieces." An augury too fully verified. The States General of France never again met till they met, ineffectually, in the reign of Louis XIV., then to be finally adjourned till the eve of the French revolution. It certainly might have been at one time expected that the States General would have succeeded in establishing constitutional government in France, but they accomplished very little, and they formed no counterpoise to the growing arbitrariness of the monarchy.

We may sum up the results of an examina-

tion into the history of the States General, in some such way as this :

First—The earlier efforts of the States General, under Marcel and Le Coq, were premature and too violent, and had the effect of turning all men of property to uphold the monarchy at any cost.

Second—That at that time and ever since, the cry of the lower classes in France has been, not so much for liberty, as for equality and fraternity.

Third—That the three Estates of the States General, were not bound together by any community of feeling or of interest, and they met not to consult for the general welfare of the kingdom, but too often as rivals and even enemies, so that the king could always find in one or other of the Estates a counterpoise for the authority of the rest.

Fourth—The States General, and especially the Tiers Etat, never exercised any control over the executive government. They contented themselves with presenting their grievances, or making remonstrances, or with suggesting or imploring remedies, but they left to the king and his conseil the high functions of the executive.

The modes of election of deputies was most complicated and at every step expressed the suspicion which the government had in confiding even a very limited power to the Tiers Etat.

There can be no greater error on the part of any government than the expression of distrust, for it must always cause an alienation of sympathy where the utmost sympathy ought to exist. Jealousy and suspicion are the most fertile causes of revolution, and this was especially the case in France. But if the elections were of the most complicated character, certainly not less complicated and unsatisfactory were the modes of procedure, while they were at the same time destructive of any sympathy which might have existed between the different Estates. The difference between the first two orders, the Spiritual and the Temporal lords, may not have been very great, but the difference between these two orders and the third, was immeasurable. Of this the established ceremonial affords the clearest illustration. In their joint assemblies the clergy and the nobles sat covered, the members of the Tiers Etat bare headed. When addressing the king the speaker of the first two Estates stood up, the speaker of the third Estate knelt down. The deputies were formed into a number of small committees of ten or twelve members. These several committees received the petitions for redress of grievances from the separate departments, and having collected and classified them, presented them to the Estate to which they more immediately pertained. These petitions, or the reports on them, were called

cahiers. When these cahiers were fully prepared they were duly laid before the throne, and then the Estates were dissolved. There was no discussion, no legislation or administration on the part of the States General. There was no open and public exchange of opinion, and after the cahiers were presented to the throne the parties were obliged quietly to await the king's pleasure in the matter, and had very often to wait in vain for any answer to their petitions—"as ineffectual as a cahier" passed into a proverb in France.

In the detailed history of the States General the absence of any harmony, any sympathy, any community of interests between the several orders in the State, is everywhere evident. The immunities which the privileged orders enjoyed, and that utter want of patriotism which prevented them from taking their share in the burdens of the State, even in its most trying necessities, and the oppressive exactions of the seigneurs from their censitaires, destroyed any associations between the Estates. The assumed hauteur, which was the more insulting and irritating, as it had so little to justify it, and the cold indifference which they showed to the wants, to the pains and sorrows of the humbler classes, together with the immorality at court which permeated the whole of the upper classes, both noblesse and clergy, who in their

gross indulgence squandered every sou they could extract from the impoverished peasantry, tended to separate continuously the upper and the lower classes of society in France. But the setting at defiance the natural laws which should regulate society is certain sooner or later to bring its own punishment, and in the great revolution we see that fearful retribution which awaits, with inexorable justice, every sin against the great moral laws of truth and equity.

## LECTURE XXVII.<sup>1</sup>

### CONTEST OF THE PAPACY WITH THE SECULAR POWERS.

In a previous lecture I gave you the history of the Gallican church till the close of the Carolingian period. By Charlemagne it was brought under the control of the crown, though it retained the management of its own affairs and held its own councils and synods, with which, however, the king and certain nobles were associated. During the feudal period it fell very much into the anarchy and confusion of the time, though it retained its right of holding its own assemblies, and controlled its own financial as well as its own judicial administration. Some-

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1. Books consulted :—*Histoire de France* Par M. E. Lavisse et M. Ch. Langlois T. III, pt. 2, *Deutsche Geschichte* 1278-1437 von Thedor Lindner. *Deutsche Geschichte* im 13th, und 14th Jahrhundert, von Ottokar Lorenz. *Histoire des Republiques Italiennes* par M. Sismondi. T. III, IV and V. *Histoire des francais*, par M. Sismondi. T. VIII, IX and X. *Storia d'italia* di Gio Villani. edit. Muratori R. I. S. *Chronicon Siciliae*, edit. Muratori, R. I. S. *History of Latin Christianity* by H. H. Milman. Vols. V. and VI, edit. 1855. *Annales Ecclesiastici* edit. Baronius. *Historia Diplomatica Frederici Secundi*, par A. Huillard-Breholles. *La Vie de Pierre de la Vigne*, par A. Huillard-Breholles. *Regesta Pontificorum Romanorum*. edit. E. Potthast, T. 11. *Regesta Regum et Imperatorum Romanorum*. edit, J. F. Böhmer. *Polichronicon* Ranulphi Higden, T. VIII. Roll Series.

times, however, a lay patronage of the inferior offices, and occasionally of bishoprics was maintained, and seigneurs who had built and endowed churches or monasteries claimed the right of making appointments to the clerical offices in connection with them, from the secular priests to the bishops and abbots. With the growth of the royal power and its entrenchment on the rights of the nobles the crown came to exercise greater authority over the church. We have noticed that Philip Augustus compelled the bishops who were in possession of seigneuries to perform all the feudal duties pertaining to them, and in the reign of Louis IX. the church was still further subjected to royal authority. The subject of the taxation of the church was all-important, and the Pope, as the head of the church, claimed that it was the duty of the universal church to contribute to the papal treasury; that all the property of the church was his, that the clergy were merely usufructuaries, and that he had the right to make such exactions as he might deem necessary. On the other hand, the Gallican church insisted that it was a hierarchy independent, except in regard to doctrine, that it had always held its own councils and diocesan synods, which regulated its government, and that it had a right to manage its own affairs. But those seigneurs who had established churches and monasteries within their seig-

neuries insisted that they had a right to control them, and to claim a part of their revenue. Against these several claims were those of the king, which were based on the fact that the church was a national church, and ought to contribute its share to the needs of the state, and in the case of such bishops and abbots as held seigneuries that they should perform the full feudal duties and pay feudal dues. These several demands caused confusion in the church's administration, while it was at the same time torn by furious dissensions between the regular and secular clergy, as well as between the metropolitans and the bishops, and the bishops and their chapters. The exactions of the Popes were very heavy, for large sums were required for the carrying on of the crusades, while also Innocent IV. was engaged in a bitter conflict with Frederick II., when he was obliged to seek the support of Louis of France, and to look for large pecuniary aid from the Gallican church.

There exists an important document which has been long regarded as a Pragmatic Sanction issued by St. Louis against the exactions of the Pope. This document, however, appears to be not well authenticated.<sup>1</sup> But it is undoubted

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1. M. Faure Hist de St. Louis, Messrs. Langlois, Viollet et Luchaire doubt the genuineness of this document, while Messrs. Bossuet, Dannon, Sismondi, Von Raumer and Guizot as well as Hallam and Milman regard it as authentic. Those who doubt its authenticity maintain

that in 1247 a deputation was sent to the Pope by some of the Gallican bishops and the king with the following complaints:—That the Holy See had usurped the jurisdiction of the ordinaries, that the benefices of the Gallican church had been filled with Italians to the serious injury of the native French, and that agents of the Pope were making exactions ruinous to the local churches. The reply of Innocent was vague and no relief from these evils was effected. This remonstrance was followed by a second in more pointed terms, and as the Pope was seeking the aid of Louis against Frederic, and because of troubles at Rome he had removed to France, and established his court at Lyons, it was natural to suppose that he would yield to the united demands of the French clergy and the king. The exactions of the Popes, however, on the Gallican church continued, till the contest between Philip Le Bel and Boniface VIII. changed the course of events, and brought the Papacy under the power of the French king. It had been the support which the French crown had

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that it is not in keeping with Louis' character or his general conduct, while on the other hand Guizot and those associated with him contend that it is perfectly consistent not only with Louis' general conduct, but was little more than the reiteration of the remonstrances of the earlier part of his reign. The Pragmatic Sanction bears the date of March, 1269, while the first remonstrance was sent to the Pope in 1245 and there is very little more in the Pragmatic Sanction than was in the remonstrances.

given to the Popes that had enabled them to reach the supreme authority, which placed them over the several national churches of Europe, particularly of France, and enabled them to contend with some degree of success against the political parties in Italy. But there was a danger lest by making too strong a use of this supremacy, by becoming too dictatorial in its authority, and too exacting in its demands, the papal see should alienate that power on which it had so largely depended, and whose support was still necessary, especially against the enemies at Rome. The death of Frederic II. had not solved the complications which had arisen out of the relations of the Hohenstauffens with the kingdoms of the Sicilies, nor appeased the quarrels of the Guelphs and Ghibellines. In 1258 had been arranged the Treaty of Corbeil, according to which Philip, the heir to the French throne, should marry Isabel, Princess of Aragon, and by which the king of Aragon relinquished to his cousin Marguerite, Queen of France, his claims in Provence, and to Louis his claims in Languedoc, retaining for himself only the seignury of Montpellier. After the death of Frederic. Innocent, having driven Frederic's son Manfred from the throne of the Sicilies, offered it to Edmund, son of Henry III. of England, and then to William of Cornwall, and on his

refusal to Charles of Anjou and Provence.<sup>1</sup> But the king of Aragon had betrothed his son Pedro to Constance, daughter of Manfred, and therefore heiress of the Sicilies. Out of these arrangements arose the Spanish claim to territorial possessions in Italy, and also the bitter struggles between the houses of Anjou and Aragon, which for long destroyed the peace of Italy.<sup>2</sup> There was also rekindled the war of the Guelphs and Ghibellines, for the Prince of Aragon, through his marriage with Constance, became the representative of the Hohenstauffens and of the Ghibelline interests.

Eleven Popes<sup>3</sup> followed one another in rapid succession. Martin, after the Sicilian vespers, fearing the power of Aragon, offered, in compact with Charles of Anjou, to support Philip in taking possession of Aragon, on condition of securing Charles on the throne of the Sicilies. Philip yielded to the temptation, but before preparations were fully made for the enterprise both Charles of Anjou and Pope Martin died, and the only result was the heavy exactions which Philip had made on his subjects; the first

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1. The rights of the Queen to Provence had evidently been transferred to Charles.

2. *Chronicon Siciliae*, Murat, R. I. S. T. X. p. 834. Giannone, *Storia civile di Napoli*. Lib. XIX and XX.

3. Alexander IV, Urban IV, Clement IV, Gregory X, Innocent V, Hadrian V, John XXI, Martin IV, Honorius IV, Nicholas IV and Celestine V.

of the very heavy exactions which distinguished his reign. Nicholas IV., who succeeded Honorius on the papal throne, lived only a short time, when Peter Morrone was raised to the vacant seat, and took the title of Celestine V. By a strange force of circumstances this quiet hermit, who had shunned contact with the world, was suddenly thrust into the highest dignity in Europe. Charles of Valois, who succeeded his father, Charles of Anjou in his Italian possessions, gained possession of Celestine's person, and carried him to Naples, where he was duly crowned.<sup>1</sup> He never entered Rome as Pope, and after a few months occupancy of the throne he abdicated, the only instance in the annals of the papacy. Dante condemned him, for the baseness of his great refusal, to that circle of hell where dwell those disdained by mercy and justice on account of inefficient mediocrity, and on whom he would not condescend to look.<sup>2</sup> Petrarch, on

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1. *Regesta Pontificorum Romanorum* edit-Potthast. *Baronius Annales Ecclesiastici* sub anno 1294.

2. *Inferno* III 59. "Guardai, e vidi l'ombra di colui.  
Che fece per viltate il gran rifiuto."

Milman understands the illusion to Celestine. Fraticelli has no doubt in the matter. A writer in the *North British Review* XL, 37, thinks that Dante refers to the young man who refused to give up his possessions and follow Christ. *Math.* XIX, 22. Petrarch *de vita solitaria*, *Satire* XV. Gower in his *Confessio Amantis* alludes to the story told by Boccaccio that Gaetani had contrived that Celestine should hear voices of angels from heaven saying, "Celestine resign" etc. Boccaccio describes those to whom Dante alludes as "Cattivi, vili, spiacenti a Dio e á demonii."

the other hand, praised his fondness for a solitary life. Celestine, after his relinquishment of the papal throne, was again seized by Charles, and imprisoned in a fortress of Campagna, where he shortly died.

Benedetto Gaetani, who came to the papal seat as Boniface VIII., was a man of great ability, of unrivalled knowledge of the world, and well versed in canon law. He is represented as blameless in his morals, but ambitious and intriguing,<sup>1</sup> and is reported to have gained the papacy by improper means.<sup>2</sup> Proud and overbearing, he was resolved to tolerate neither the intervention of a king at Paris nor at Naples. He had all the arrogance of a Hildebrand, but he had not his clearness of judgment nor his cautious persistency. Peace could not long be preserved between two princes such as Philip Le Bel and Pope Boniface, equally arrogant,

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1. The Bull in which Boniface announced the abdication of Celestine and his own election is a peculiar document. Vid. Rymer's *Federa T. I.* part 3, page 154. Fraticelli distinctly says of Celestine "Fu incarcerato per ordine di Bonafazio VIII suo successore."

2. Dante *Inferno XIX*, 55.

Se' tu già costi ritto, Bonafazio ?

Di parecchi anni mi menti lo scritto.

Se' tu sì tosto di quell'aver sazio.

Per lo qual non temesti tórre e inganno.

La bella donna, e dipoi farne strazio ?

Gower in *Confessio Amantis* addresses him "Thou Boniface. Thou proud clerke; Misleader of the Papacy." Higden in his *Chronicon T. VIII* gives a prophecy ascribed to Celestine regarding Boniface. *Ascendisti ut vulpis, regnabis ut leo, morieris ut canis.*

equally determined to manifest their power, and equally unscrupulous as to the means which they employed to accomplish their purposes. The Pope had assumed control of the finances of the Gallican church, and had accorded to Philip an extraordinary impost, ostensibly for the purpose of carrying on a crusade against Aragon. Though peace had been arranged with Aragon, Philip continued to levy the impost on the clergy, on account of the war which had now broken out with England.<sup>1</sup> Some of the provincial synods made grants, but others refused, and carried their complaints to the Pope, and the result was the Bull "*Clericis laicos*"<sup>2</sup> in which Boniface forbade any of the potentates or officials levying exactions from the clergy, and also any of the clergy on any pretext whatever paying any part of the church's goods to laymen.

Both Edward of England and Philip Le Bel protested against this action of Boniface. In France an assembly of the clergy was held, and the bishops of Nevers and Beziers were sent to Rome, while at the same time a royal ordinance was issued forbidding the exportation of gold or silver out of the realm. Boniface paid no attention to this act of Philip, and before the arrival of the bishops he despatched friendly

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1. Chron. de Guilliami de Nangi tr. Guizot p. 227.

2. Rymer's *Federa* T. I. part 3, p. 156. *Bulla Bonafacii ab ecclesiasticis personis, Papae licentia non obtenta non concedendo.*

letters to the king ignoring his act of reprisal. He expressed his strong attachment to Philip, and his anxiety for his welfare, encompassed as he was by such enemies as the king of England, the king of the Romans, as well as of Spain. The Bull "*Clericis Laicos*" had, he said, been called forth by the insolence of Philip's councillors; he had not intended to declare that Philip's clerical subjects should not contribute to his needs, "*pro defensione regni tui*;" though excesses had been committed by exactions which could not be allowed, and he had sent to Philip a legate whom he hoped he would receive, and who would fully explain his intentions.

This letter, the covert purpose of which was easily discerned, stirred up a strong feeling of indignation among all classes, lay and clerical, in France, and called forth a large number of epistles—the first specimen of the anti-papistic literature of Philip's reign. Boniface perhaps felt that he had been too rash in placing himself in hostility with Philip.

The Count of Flanders had taken the side of Edward of England, and the danger of this union to France was so great that the French prelates urged Boniface to withdraw the Bull "*Clericis Laicos*," and the Bull "*Etsi de Statu*" was a formal renunciation of the previous instrument. The Bull "*Clericis Laicos*" was equally futile in England for Edward wholly ignored it.

Boniface now thought it his duty to bring about peace between Philip and Edward and the Count of Flanders, and he despatched legates with pontifical letters to the kings commanding them to refrain from hostilities. Boniface wanted tact, which is so necessary to those who are invested with power. His letters were couched in terms so insolent and overbearing that they served to incense the belligerents rather than conduce to peace. Philip replied that he was sole king and governor of his own domains, and would allow no superior, that he had no objection to submit the matter between himself and England to arbitration, to a private person, to Benedetto Gaetani, but not to Boniface VIII. Once again Boniface was obliged to stoop from the imperious position he had rashly assumed. He was in financial straits, but worse than all he was now at open war with the citizens of Rome, or at least with the leading families. The Colonna was one of the most important families in Rome.<sup>1</sup> They were very wealthy, having valuable estates in the Campagna, and other parts of Italy. They had large family connections, and had for long exercised great influence in the papal Curia, of which at that time Guglielmo and Pietro, uncle and nephew, were important members. They had been

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1. They were Ghibellines while Boniface had very strongly identified himself with the Guelphs.

favourites of Nicholas IV. and Celestine V., and had even voted for Benedetto Gaetani, for the Gaetani were among their clients. So long as the Colonnas were supreme in the Curia they could exercise some controlling influence over the proud but injudicious Pontiff. Besides they had been favourites of Boniface's predecessors, whom now Boniface assumed to look on with contempt.<sup>1</sup> He therefore sought to place difficulties in the way of the Colonnas, and to humiliate them, while he heaped his favours and honours on members of his own family.

It was not long before a bitter feeling arose between the two families. Pietro Gaetani, who had just been created Count of Caserta, had purchased a part of the estates of the Annabaldi. The Annabaldi were closely related to the Colonnas, and in the paucity of heirs these hoped one day to inherit their estates. Pietro Gaetani was journeying along the Appian way with his treasure of seventeen thousand florins to pay for his purchase, when he was waylaid by Stefano Colonna, who seized the treasure. This high-handed act increased the growing bitterness between the Pope and the Colonnas, and recriminations were uttered on either side. The Colonnas declared that the election of Boniface was not

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1. Vid the Bull of Boniface. Rymer's *Fédéra* T. I. part 3. De concessionibus et actis quæ antecessor ejus papa Celestinus imprudenter et ignoranter fecerit revocandis et adnullandis.

valid because by canon law and the usages of the Papacy Celestine could not abdicate. On the other hand Boniface declared the Colonnas out-laws, and confiscated their estates.<sup>1</sup>

There was a family at Rome, the Orsini, between whom and the Colonnas there had been a strong enmity, and Boniface looked to them to aid him in the bitter contest on which he had entered. To meet this coalition the Colonnas turned to France. At the time of the abdication of Celestine the question of its legality had been submitted to the University of Paris, and that body had expressed the view that he could not abdicate, and therefore that the election of Boniface was not valid. The Colonnas now represented to Philip that they were merely submitting to the opinions of the great masters of the University in refusing to acknowledging the validity of Boniface's election, and that it was through this and through their desire to uphold the honour of the king that the two Colonnas, who were cardinals, had incurred the hate of Boniface. Philip seemed quite ready to espouse the cause of the Colonnas. But just then an embassy from Boniface arrived at the French court, and informed Philip of the Pope's intention to canonize Louis IX., and to issue the Bull "Etsi de Statu," and to make further concessions.

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1. He issued a bull against them, Sismondi *It. Rel.* T. IV. page 132. Guillaume de Nangi page 226.

The result was that the Colonnas were left to their fate, and a crusade was begun against them, Boniface granting to those who should take up the war against the Colonnas all the indulgencies which had been granted to the crusaders to the east.

But there were other complications which tended to aggravate the difficulties, and prevent any likelihood of a solution. The war with the Aragonese and the Ghibellines of Sicily, whom Boniface asserted that the Colonnas had aided, was still raging, and the Pope again found it necessary to solicit subsidies from the French clergy.

No confidence was to be placed in any one of the parties, and the merest accident might change the whole aspect of affairs. Boniface's enterprise and remarkable activity were always rendered futile by his strange unwisdom, and each new design which he purposed only served to tighten the meshes of the net which he was weaving around himself. The Colonnas, persecuted and driven from one stronghold after another, had fled from Italy, and had established themselves in France, where they were received with much friendliness by the French people and the king.

But a storm was approaching from another direction. The war with England and Flanders had continued without any marked result.

Edward, however, had become aware that the most vulnerable part of France was on the north-east. But any attack in that quarter was only possible through the connivance of the German Emperor. Adolph of Nassau had been elected to the imperial throne, and had entered into friendly relations with Boniface. He readily fell in with Edward's plans, and addressed a letter to Philip complaining of his aggressions and those of his ancestors on the western frontier of Germany, and demanding satisfaction.<sup>1</sup> Albrecht of Austria was, however, a formidable rival. He naturally associated himself with Philip, and they formed a close alliance. This served to increase the bad feeling between the king and Boniface, who had identified himself with the cause of Adolph. Philip had allied himself with the Scotch, who had been harassing England on the border between the two countries, and the Pope who had at first sympathized with the Scotch had finally taken up the cause of the English king.

Philip and Boniface may now be regarded as opponents in a bitter struggle. They were both able and determined men, but utterly unscrupulous, and ready to adopt any means how-

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1. For the whole of this struggle see Linders *Deutsche Geschichte unter den Habsburgern und Luxemburgern*, B. I. 9th to 17th, Abschnitt. Also *Chronique de Guillaume de Nangi*.

ever vile to carry out their purposes. Philip had, however, more tact, and succeeded oftentimes in attaching to himself those who had hitherto been his strong opponents. Boniface on the other hand apparently did not understand men, and generally succeeded in alienating those who had been his best friends, till he remained without one on whom he could rely for support.

The French people were strongly devoted to the royal family. Philip Augustus and Louis IX. had done much for France, and had made her the first nation in Europe. Through their home policy they had extended the privileges of the middle and even lower classes, and had restricted the privileges of the feudal barons. They had also made several concessions to the clergy, and had done much towards establishing the independence of the Gallican church. Philip Le Bel now reaped the advantages of the honour and prestige, which his ancestors had gained, and in his struggle with Boniface he received the full support of the French people, and when he called together the first States General in 1302, that support was very cordially given, not only by the barons but by the clerical delegates and the members of the Tiers Etat.

The action of the States General was expressive rather of attachment to the French crown, than of a decided intention to proclaim the independence of the Gallican church. The result

was that if the Gallican church maintained its independence of the Papacy, it on the other hand became subjected, like the other powers in the state, to the French crown. But both Philip Augustus and Louis IX. had encroached on its privileges without exciting any remonstrance from the prelates, and now Philip Le Bel was to subject her to complete submission to the crown. She was not only freed from the dues which she had paid to the feudal barons—the Mundium fee for protection, the Regale or Relief on the election of a bishop or abbot, and the Droit d'Amortissement, which were henceforward all payable to the crown, and in this way any dependence of the Gallican church on the feudal hierarchy was transferred to the king.

The relations of the Gallican church with the Papacy had been so unsatisfactory, especially under the rule of Boniface, and his demands had been so exacting that to escape these the French prelates had offered no strong opposition to the encroachments of the later Capetians. At the time when the relations between Boniface and Philip were very strained a legate had been appointed by the Pope to represent the interests of the Papacy at the French court, and no appointment could have been more impolitic. Bernard Saisset had been abbot at Pamiers in Languedoc. Boniface now erected Pamiers into a bishopric, and appointed Saisset to the see

much to the indignation of the prelates of the south. The south was as yet scarcely incorporated with the kingdom, and the clergy were looked on with suspicion; for, since the Albigensian crusades they had been appointed by the Pope without any reference to royal authority. The appointment of such a man as Saisset, who was of ungovernable temper, and as haughty and overbearing as Boniface himself, was very distasteful to Philip, to whom he assumed a supercilious and dictatorial tone. He asserted the illimitable power of the church over all temporal sovereigns. Philip's conseillers, chief among whom were Peter Flotte and William de Nogaret, suggested the arraignment of the legate. But before venturing on so strong a measure against a papal legate it was proper for Philip to communicate the proceedings to the Pope, and Flotte was sent to Rome as the king's ambassador. He was a man of intrepid bearing, and determined to uphold the independence of his royal master. He was commissioned to demand the degradation and condemnation of the legate, and permission to accuse him before the court of justice. The Pope asserted his supreme authority, and shielded his legate. To his assertion of his superiority over the secular powers Flotte replied: "Your power in temporal affairs is a power in word, that of the king, my master, in deeds." Such negotiations were

not likely to end in peace. The Pope required that Saisset should be sent to Rome, to plead before the papal Curia for any ill which he had done. At the same time he sent a series of Bulls to Philip. In the first "Salvator Mundi" he revoked any privilege which he had granted to the king to levy ecclesiastical conventions for the defence of the state, and forbade the prelates of France giving any subsidy without his permission. It was a repetition of the Bull "Clericis Laicos." In a second Bull, "Ausculda Fili," he declared that God had placed him above kings and kingdoms, and that Philip must not allow himself to suppose that he was superior, and ought not to submit himself to the chief of the ecclesiastical sovereignty, for to think so he would be a fool or infidel. The Pope also reproached him for his seizure of the revenue of the church, and announced his intention of holding a council at Rome to be composed partly of prelates of the Gallican church, in order that through the support of the council he might be able to lead Philip in the right way, but that if he should persist in his course the Curia would feel it its duty to take up arms against him. The Archbishop of Narbonne, who bore the papal Bull, was refused admittance to the king's presence, and fifteen days after the Bull was publicly burnt in Paris, and the act was proclaimed

throughout the city by the sound of trumpets.<sup>1</sup> Flotte on his return to France took as chancellor a prominent part in the States General, which Philip had summoned, and detailed the result of his embassy. The nobles under the Count D'Artois expressed very resolutely their determination to maintain the independence of the royal power, and of the Gallican church, against any efforts of the papacy. The clergy followed in the same course, though as might be expected not with equal determination.<sup>2</sup> They sent a statement to the Pope in deferential terms, stating their willingness to take part in a council at Rome, but their inability to leave the realm without the king's permission. They pointed out that the breach between himself and Philip was injurious to the interests of the Gallican church, which was becoming separated from the other bodies in the State, and they urged him strongly to withdraw his injunctions. It is not difficult to imagine the effect which these representations, made by the nobles, the clergy and the commons, through their delegates, would have on Boniface. He withdrew nothing. He

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1. M. Langlois thinks that the burning was an accident "Mais il semble que le fait ait eu lieu par accident." Lavissee Hist. T. III, 2. A supposition quite gratuitous.

2. Vid Baronius T. XIV p. 33, where the letters of the French prelates are given at some length. Baronius, however, is very partial to the Pope, and though he may be generally trusted as to the facts, he yet gives to them a strong papal colouring.

accused Philip, or rather his conseillers, of having misrepresented the terms of the Bull.

On the eleventh of July, 1302, was fought the battle of Courtrai, when the Count of Flanders defeated the French army. Both Flotte and the Count D'Artois were slain, and the pope at once declared it to be the judgment of God. In the November following the Council met at Rome. A few of the French prelates were there. The loss of the Battle of Courtrai, and the death of two of his most trusted conseillers deeply affected Philip, and he wrote to the assembled prelates urging a reconciliation. Perhaps the Pope took advantage of this symptom of weakness, and relying on the support which the council was disposed to give him, he issued the famous Bull, "*Unam Sanctam*."<sup>1</sup> This Bull is the most absolute proclamation of the claims of the papacy to supreme power, and it is addressed to the whole Christian world. It represents the Catholic church as one body and one head, for it has not two heads as a monster. "*Ecclesia est unum corpus, unum caput non dua capita quasi monstrum.*" Its head is Christ, and the vicar of Christ is the successor of St. Peter. There are two swords, the spiritual and the temporal; they who deny that the temporal sword is St. Peter's forget Christ's words: "Put up thy sword into

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1. Baronius Lib. XIV, p. 34. sub anno 1302.

its scabbard." The spiritual sword is in the hand of the Pope, the temporal in the hands of the king, but the king can only use the sword for the church, and according to the will of the Pope, and if the temporal errs it is to be judged by the spiritual. The Bull concludes with a strong declaration that every human being should submit himself wholly to the Roman See, "In principio coelum Deus creavit et terram; porro subesse Romano pontifici omni humanae creaturae declaramus, dicimus, diffinimus, et pronunciamus omnino esse de necessitate salutis."

This Bull is the culmination of centuries of papal presumption. It was not the statement of something new. It was the reiteration of the Dictatus Papae of Gregory VII., and of the repeated statements of the Isidorian decretals, but it was a reiteration in stronger terms. This presumptuous boast of the supremacy of the Papal See over every other power on earth was futile. The Papal See could not maintain its position without the support of the secular arm. It had to rely on the very power which it seemed to be doing its utmost to alienate. Philip paid little heed to the Pope's interdicts and anathemas. For the moment, however, his attention was directed to the war with Flanders, which was assuming unexpected proportions, but within a year he published an edict denouncing the cruelty and tyranny of the Inquisition. At the same time he

sought to strengthen his position by new alliances, while he also granted concessions to his people in order to gain still further their sympathy and support in his unfortunate quarrel with the Pope. On the other hand, Boniface evidently felt that by issuing the Bull "*Unam Sanctam*" he had taken a decisive step, which must excite the opposition of the kings of Christian Europe, and especially the increased indignation of Philip.

While the king secured peace with England, the Pope made overtures of friendship with Albrecht of Austria. He had a little before condemned him as the murderer of Adolph, who had been killed in the battle of Hasenbuhl, it was said by the hand of Albrecht himself. Now Boniface was ready to forget the misdeeds of the past, and to recognize him as a dutiful son of the church, and at the same time wrote to the princes of the Empire to render fealty to Albrecht, the rightful King of the Romans. He further declared him to be the protector of the Holy See; and Albrecht on his part swore to guard the person of the Pope from any injuries to life or estate. Boniface had miscalculated the effects of the defeats which Philip had suffered from the Count of Flanders, and wrote letters to him offering to receive him back into the church if he would acknowledge his faults, and submit himself to papal rule, and he

sent legates with power to remove the interdict so soon as Philip should express his sorrow for the injury which he had done to the Holy See. As Philip had made peace with Edward of England, and the French people had expressed their sympathy with him, and had promised support in the present struggle he was not disposed to submit to the Pope's requirements. The legates that had been sent carried with them twelve articles which they were to lay before the king. The Pope did not yield a single point and the whole tone of the articles was insulting. Philip's reply was also in twelve articles. The terms of the Pope's articles were direct, if imperious. The terms of Philip's were evasive. Boniface now proceeded to extreme measures, and excommunicated the king. Philip called together a council of prelates and barons, at which, however, only two archbishops and three bishops were present. William de Nogaret had succeeded Flotte in the office of Chancellor. He was an able jurist, a man of determined character, and bitterly opposed to the assumptions of the papacy. He was a native of Toulouse, and his ancestors had suffered in the persecution of the Albigensian crusades. He laid before the Council four charges against the Pope: 1. That he was not a true Pope, for his election was invalid. 2. That he was a heretic. 3. That he was a simoniac. 4. That he was

a man weighed down with crimes—pride, iniquity, treachery, rapacity. These accusations made in the presence of the bishops and archbishops were duly recorded. In the meantime, Cardinal Marcellinus had arrived in France to declare the excommunication of Philip. Two messengers from the Pope to the cardinal were seized and imprisoned. It was now evident that matters were approaching a crisis. Another meeting of the Council was called, where the charges of Nogaret were reiterated, and supported by William De Plaisain. Plaisain was also a native of the south, and was in full accord with Nogaret's views. It was determined that Philip should convoke a general council before which Boniface should be arraigned to answer the charges made against him. As can easily be supposed Boniface strongly resented these measures, and one Bull after another again issued from the papal chancery against the king. Nogaret and Plaisain had gone to Italy, perhaps bearing the summons to the pope to appear before Philip's council. They were both bold, determined men, cherishing bitter hatred against the Papacy, and possibly eager to take vengeance for the ills which their ancestors had suffered. They were possessed of ample funds, with which they bought over some of the attendants of the palace, some of the citizens, and even it

was said some of the cardinals.<sup>1</sup> They also hired a body of disbanded soldiers.

The Pope had removed to his palace at Agnani, his native place and his favourite residence, and on the 8th of September the great Bull of excommunication was to be publicly fulminated against Philip. Boniface must have known that his bitter enemies, Nogaret and Plaisain, were in the neighbourhood, and had been joined by Sciara Colonna come to wreak his private revenge, but resting on the inviolability of his sacred person and office he took no precaution against any danger. On the 7th the little town was thrown into a state of excitement. Sciara Colonna was approaching with a band of three hundred horse, while soldiers in the pay of France, and led by some Italian nobles and some natives of Agnani, were crowding through the narrow streets. The bells rang an alarm, the citizens assembled, and the command was given to Arnulf, who was well known to be hostile to Boniface. It was evident that the conspiracy was deeply laid. The papal palace, and the palaces of the cardinals, and of the Pope's nephew, were first attacked. Boniface implored

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1. Hist. di Giovanni Villani, Muratori R. I. S. T. XIII, p. 395. "Spendendo molta moneta correndo i baroni del passe, e cittadini d'Agnani. Villani gives a very detailed account of the whole event, which Milman has followed with much closeness.

delay, which was granted for eight hours. At the expiration of that interval, however, the palace was again attacked, and Nogaret and Colonna forced their way into the Pope's presence. Boniface now realized his danger, but maintained his attitude of proud defiance. The palace was given over to the plunder of the free-booting soldiers. It was filled with untold wealth, of money, and valuables, which were carried off, and nothing left but the bare walls. The aged Pontiff was left alone, for the cardinals and his familiar friends had gone into hiding. His pride, however, was not broken. He took his seat on the pontifical throne, and placed on his head the papal crown, and with the stole of St. Peter on his shoulders, the keys in one hand, and the cross in the other, he awaited his enemies. The people of Agnani moved to pity removed him, and led him into the street, but almost immediately returned him to the palace, where he remained alone for three days. The Romans hearing of the insults offered the Pope hastened to Agnani, and conducted him back to the sacred city, which he entered in triumph. But this outburst of enthusiasm soon gave place to a general revolt, and Boniface was again a prisoner. His strength was gone, but the insults to which he had been subjected had not broken his proud spirit, and his overweening haughtiness was manifest to the last. Many

stories were told of the manner of his death, but most of them can be traced to Ghibelline sources, and cannot be relied on.<sup>1</sup>

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1. He is said to have dashed out his brains against the walls of his chamber, but it is more probable that he died of fever brought on by his late sufferings and anxiety. Higden records a strange story, "*Igitur senescallus Franciae Guilielmus de Longareto, vir quidem in agilibus admodum circumspectus, e fratres de Colonna praedicti foederatis viribus Bonifacium papam comprehenderunt, in equum effrenum versa facie ad caudam sine freno posuerunt, quem sic discurrere usque ad novissimum halitum fecerunt, ac fame necaverunt.*" *Polychronicon Ranulphi Higden* T. VIII, p. 204. We are reminded of Voltaire's tale of Mazippe. *Hist. de Charles XII*, p. 196 and of Byron's poem. Milman gives a milder version of this story, and says that Boniface was led in this way from the palace to the prison, but he apparently forgets that his palace was his prison. Milman gives a very detailed account of the whole contest between Philip Le Bel and Boniface but it requires to be read with some discrimination.

## LECTURE XXVIII.<sup>1</sup>

### THE REMOVAL OF THE SEAT OF THE PAPACY TO AVIGNON AND THE QUARREL OF THE MENDICANT ORDERS.

I have lingered in giving you some details of the contest between Philip Le Bel and Boniface VIII. because it is one of the most important events in the Middle Ages, for the King and the Pope represent the two great contending interests. The long struggle of the Papacy to secure the sovereignty over the secular powers of Christian Europe had assumed its most aggressive form.

The union of the Papacy with the Italian Republics had led to the overthrow of the imperial

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1. Books consulted : besides those mentioned, in the last lecture, the following :—*Die Romfahrt Ludwigs des Bayern* von Dr. Anton Chroust. *Italienische Politik*, Papst Innocent VI und König Charles IV von Emil Werunsky. *History of the Papacy from the Great Schism to the sack of Rome*, by Maundell Creighton, D.D., late Bishop of London. *La France et la Grand Schism*, par Noel Valois. *Le Proces des Templiers*, edit. Michelet. *La Royaume d'Arles et de Vienne*, par Paul Fournier. *Rudolph von Hapsburg*, von Dr. J. Hirn. *Der Kirchen politische Kampf unter Ludwig dem Baiern*, von Dr. W. Preger. *Beitrage und Erörterungen zur Geschichte des deutschen Reichs, 1330-1334*, von Dr. Preger. *Der Kampf Ludwig des Baiern von Dr. Carl Müller*.

power as represented by the Hohenstauffens, and by the death of Frederic II. the influence of the Papacy for a time prevailed in the Sicilies; while in Germany the house of Hapsburg was quite unequal to the task of binding the several German states together, and still less of maintaining its hold on North Italy, or of controlling in any way the measures of the Papacy.<sup>1</sup> In England the church continued to preserve its independence, though for a time John in his opposition to the barons submitted to papal control. The Anglican church, however, sided with the barons, and it was largely through its assistance that these were able to meet the aggressiveness of the royal power. Under the first and third of the Edwards the Papacy was not able to exercise much control over the church, and still less over the throne. The distance of England from Rome, and her insular position, removed her in a large measure from the policy of the papal court, and from the intrigues which marked the purposes of the Papacy, as well as of the other thrones of the continent.

After the fall of the Hohenstauffens the Popes no longer required the assistance of the Italian Republics. They were very naturally opposed to

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1. The historians of the Romish church insist that the Holy Roman Empire fell with the death of Frederic and that Rudolph of Hapsburg was not Frederic's successor but only the first of a new line of German Emperors whom they were pleased to call Kings of the Romans.

that spirit of freedom which these exemplified in their municipal constitutions, and it was no doubt with some degree of satisfaction that they saw them gradually falling under the rule of powerful nobles.

The strongest opposition to the extreme pretensions of the Papacy came from the royal house of France, and from the Gallican church. The claims to supreme sovereignty put forth by Hildebrand and Innocent III., and the assertion of the right of investiture had excited much opposition, while the succession of several weak Popes opened the way to evils which degraded the Papacy in the eyes of the people of Western Europe, and destroyed that respect which should be the source of her strength.

The control which Philip Augustus acquired over the feudal barons, the support which he gave to the Communes, and his efforts to establish an improved jurisprudence; the pure life of Louis IX., with the higher tone of morality which he imparted to his court, and his respect for law and justice, all won for the French crown the esteem and affectionate regard which the Papacy had lost. Boniface stood almost alone in the contest with Philip Le Bel. The gentleness, the retiring disposition, and the purity of life of Celestine, had gained general esteem, but this passed with his resignation, and Boniface's pretensions destroyed any influence for good

which Celestine in his short rule of six months may have gained. But while Boniface expressed in his own person the high claims of papal supremacy, with Philip Le Bel the absolute character of the French crown began very plainly to manifest itself. Absolutism in church and state had come into direful conflict. Boniface was overthrown, and with him the mediæval Papacy came to an end.

In looking back over a course of more than four hundred years we cannot but notice how much the Papacy had depended on the Empire. Hildebrand's pretensions, and his claim to the exclusive right of investiture had separated the interests of Church and Empire, and the degradation to which he compelled Henry IV. to submit served to awaken the mind of Christian Europe to the evils of a spiritual despotism. Any union which had existed between the church and empire was then virtually broken, and it was not long before the opposition to the extreme pretensions of the Papacy began to show itself, and assume its most violent form under the Hohenstauffens. But by the overthrow of the power of the Empire the Papacy lost its main support, and now on the death of Boniface VIII. the church fell completely under the power of the French king. The political future of the church depended largely on the successor to Boniface, though, whatever course he might pursue, it

would be very difficult to hide the weakness of the Papacy.

After eleven days the vote of the cardinals united on Nicholas Boccacini, who took the title of Benedict XI. He was a native of Treviso, and was one of the three cardinals that had remained with Boniface to the last. He was a man of some culture, but was timid and always ready to yield to a compromise. He agreed to annul the procedure of Boniface against Philip and his conseillers, with the exception of Nogaret, De Plaisain, Belleperche, and De Mercan. He also restored the Colonnas to something of their former dignity. Nogaret continued his charges against the dead Boniface, when Benedict issued a new Bull against him, and summoned him before a council to be held at Perugia. But before the time appointed for the assembling of the council Benedict died. He was an Italian, and his sympathies were with the Italians and the Roman church, not with Philip or the Church of France. Philip's object now was to secure the Papacy for a Frenchman. The papal seat remained vacant for eleven months, during which time there was a strong contest in the sacred college between the partisans of France and the Bonifacians. At length a Frenchman, a creature of the king, was placed on the vacant throne. How his election was secured remains a mystery, but it was undoubt-

edly a triumph for the French king. Bertrand de Got, Bishop of Bordeaux, took the name of Clement V. Nogaret on his return to France had received new honours and dignities, and now by Clement he was absolved from all his past conduct, and his zeal commended.

In order to maintain his hold on the Papacy, Philip caused the removal of the Holy See to Avignon, a town in Provence, which was under the rule of Charles of Valois, who was also still king of the Sicilies. Though Avignon was not in France proper, it was close on its borders, and under the authority of a member of the royal family, so that the Pope was virtually under French control. Though deprived of its political power, the Papacy retained much of its former prestige; it had its court which it maintained with much of its old dignity, and it was still capable of making its influence felt in the councils of Europe.

When Albrecht of Germany was murdered some three years after the accession of Clement, Charles of Valois sought election to the vacant Empire, and Philip Le Bel urged his claim on Clement, who was thus the arbiter between France and the Empire. Seldom was the election for the imperial throne a matter of such great anxiety or doubt. If through the influence of the Pope, who was largely under French control, Charles of Valois should be

chosen, then the fate of the Empire would seem to be sealed, for it would be virtually subjected to French control, while the Papacy would be still more completely under the rule of Philip and his successors.<sup>1</sup> The unexpected however happened, and Henry of Luxemburg was elected, and took the title of Henry VII. Shortly after his accession, Henry determined on once again bringing Italy under the rule of the Empire. He was promised the support of the Ghibellines, who were tired of the oppression which they suffered from the house of Anjou.<sup>2</sup> Henry marched into Italy, but unfortunately accomplished very little. He advanced to Rome, and was crowned Emperor by the Cardinal Bishop of Ostia, who had been commissioned for the duty by the Pope. By his descent into Italy Henry became involved in those political difficulties which had so long disturbed the peace of the peninsula. Robert, who had succeeded his father, Charles of Valois, as king of Naples,<sup>3</sup> began to dread the progress which Henry was making, and seemed to see in his coronation the revival of imperial power in Italy, and the renewal of the claims of the Hohenstauffens on Sicily.<sup>4</sup> He sought the support of Clement, and

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1. Vid. Lindners *Gesch.* B. I, p. 157. *Le Royaume d'Arles et de Vienne*, par Fournier, Ch. IX & X.

2. Vid. Dante's *Epistolae*, V, VI, VII.

3. The kingdom of the Sicilies was henceforward called the Kingdom of Naples!

4. Gianone, *Storia civile di Napoli*, T. III, Lib. XXII.

through him of Philip Le Bel. Clement seems to have felt that he had gone far enough in securing the election of Henry of Luxemburg to the Imperial Throne. It had evidently been for the purpose of checking the arbitrary measures of Philip, and preserving as far as possible the balance of power between the Empire and France. Now, however, that that had been accomplished, he was quite willing to see Robert of Naples, as also Philip, embroiled in a war with Henry. How far matters might have gone it is impossible to say, for Henry fell sick of a fatal malady contracted from the miasmata of the Campagna, and died at Bono Convento, in the neighbourhood of Siena. Philip remained master of the field, though he was not long to enjoy the position. The three principal actors on the scene all passed away in a little over a year.<sup>1</sup> Robert of Valois was now perhaps the most powerful sovereign of Europe. He was king of Naples, and the Florentines who represented the Guelphs had placed themselves under his protection. By the session of the principality of Arles by Burgundy, and its union with the principality of Vienne, there was founded the small kingdom of Arles, within which lay Avignon, the new seat of the Papacy, so that the Pope was

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1. Henry died on the 24th of August, 1313, Clement on the 20th of April, 1314, and Philip on the 29th of November of the same year.

under the power of Robert, at once the representative of the Guelphs and of the Angevins. He does not seem to have asserted his independence of the French crown, and was mostly occupied with the affairs of Italy.

Philip left three sons, and a daughter, Isabelle, who married Edward II. of England, and the issue of this marriage was Edward III., who after the death of Philip's three sons without male heirs, put forth claims to the French throne, out of which arose the Hundred Years' War. Charles of Valois, brother of Philip Le Bel, however, left male heirs, and the succession to the French throne reverted to the Valois line. In France the succession to the throne had become hereditary, while in the case of both the Papacy and the Empire it was elective. After some delay Louis of Bavaria was chosen Emperor, but a longer interval lapsed between the death of Clement V. and the election of a new Pope, for only after a vacancy of two years, a period longer than the reign of Louis X., was Jacques D'Ossa, a Frenchman, chosen Pope, taking the title of John XXII. By this election the authority of the French crown over the Papacy was continued, and Avignon remained the papal seat. For nearly seventy years, a period which subsequent historians call the Babylonish captivity, the head of the Romish church lived, and maintained his court within French

territory, and was virtually subject to the rule of the French crown. The result was that the Gallican church also lost its independence. So long as the Papacy had maintained its supremacy it had been possible to play the King and the Pope against one another, and to curb the aggression of the one with the assistance of the other, but this was no longer possible, and the Gallican church as well as the Papacy fell into complete subjection to the French crown.

The period covered by the captivity of Avignon is the darkest in the history of the church. Men were chosen Popes who were certain to be subservient to the French king, who were wanting in independence of spirit, and were too often lax in morality. Philip Le Bel had governed with a firm, if sometimes harsh rule, but his sons had very little of his capacity, or of his firmness of purpose. Louis was frivolous, and had no sense of his responsibilities, or of the dignity of his position, and we gather from the letters of the Pope to Philip, who succeeded his brother, that he was not less wanting in ability to rule. Charles the third son of Philip Le Bel was more able than his brothers, yet wanted that judgment which is so necessary to the proper exercise of government. The Pope did indeed propose that he should be made Emperor in place of Louis of Bavaria, but this was rather to serve his own purpose than from admiration of

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Charles' ability. Charles attempted to regain those territories in Aquitaine which Louis IX. had ceded to Henry III. of England, but he only succeeded in gaining L'Agenois, which, however, he was obliged to restore to Edward III. Charles' reign was no longer than his brother Philip's. The three reigns of Louis X., Philip V., and Charles IV., only covered a period of fourteen years.<sup>1</sup> With the death of Charles this branch of the Capetians failed, and Philip, the son of Charles of Valois, and grandson of Philip III., came to the throne as the head of the Valois line. The rather strange fatality which befell Philip Le Bel and his three sons was regarded as a manifestation of Divine vengeance, not so much however for Philip's cruel persecution of the Templars, as for his treatment of Boniface, and his depriving the Gallican church of her immunities. The persecution of the Templars by Philip Le Bel must remain as a stain on his memory.

At first a very small body of knights, who pledged themselves to do battle against the Saracens, the Templars had grown to be a mighty

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1. Philip and his three sons were noted for their beauty and for that physique which seemed to indicate a strong constitution, yet Philip the father died at the age of forty-six, Louis, at the age of twenty-six, leaving a posthumous child that lived only five days. Philip, the younger, died at thirty, having seen his two sons die before him. Charles, who also had lost two sons, died in his thirty-fourth year.

host, a half military and half monastic community. They had accepted the three monastic vows of implicit obedience to their superiors, of chastity, and of abandonment of personal property. Instead, however, of leading the quiet, retired and devotional life of monks they gave themselves to the chivalrous life of the battlefield, and formed the bravest, the best disciplined, and most experienced army of the time. Devoted to the interests of the Papacy they yet formed an independent republic, conducting in the East their own plans of campaign, and confessing subordination to none of the crusading monarchs. Several Popes, and especially Innocent III., in gratitude for the aid which they had rendered, and in admiration of their daring exploits, granted them many privileges and immunities, and different churches and even laymen of Western christendom vied with one another in their donations of castles and rich possessions. In this way the Templars became a very powerful and independent fraternity. The personal vow of abnegation, which each member took on entering the order, was not regarded as binding on the whole united body. But their growing independence and their great wealth was certain in time to render them formidable to the several powers in Europe, and in the contest with Frederic they espoused the cause of the Pope, to whom they gave valuable assistance.

The final failure of the Crusades was attributed in a large measure to Divine wrath at the changed character of the order, and to their independent conduct, when unity of action had seemed necessary to success. Such a charge was certain to prejudice the popular mind against them, and the several powers were only too glad to use the opportunity which was thus afforded them of destroying the order. But the real cause of the downfall of the Templars was their acquisition of great wealth, which excited the cupidity of the kings, and especially of Philip Le Bel, who was unscrupulous as to what means he used to accomplish his ends. His treasury was empty, the country as well as the church was exhausted by his heavy exactions, and he had recourse to spoilation to meet his necessities. Clement V., at Avignon, on some trumped up charges of heresy and improper conduct against the Templars, sanctioned the measures of Philip. The order of the Templars was suppressed, their valuable possessions confiscated, and a large number of the more prominent members put to death. In England, in Spain, and in Germany, proceedings were also taken against the order, and its property confiscated. Philip, however, did not dare to take possession at once of the confiscated estates; he made them over to the Hospitallers, of whom he

placed himself at the head, and only gradually were the estates absorbed by the crown.

The Popes at Avignon were not able to control the actions of Philip, or of his sons. John XXII. was regarded as possessed of much learning and well read in canon and civil law, but he was a believer in magic and sorcery, and this gave a colouring to his religious views, and afforded an apology for many of his evil and cruel deeds. Weak and irresolute characters are often tyrannical, and John set up the inquisition which persecuted any who showed opposition to his rule, while he used every means to subject the weak and frivolous sons of Philip to his authority.

The revolt of the Dominican and Franciscan friars from papal rule however compelled the Pope still to rely on the assistance of the French crown. When speaking of the crusades I had occasion to allude to the rise of the Mendicant Orders, of the Franciscan and Dominicans, as also somewhat later of the Carmelites and Augustinians, and also to the great service which they had rendered to the Papacy, and to the many privileges which had been granted them.

With the increased power of these religious fraternities their ambition and their zeal became greatly developed. They aspired to fame and authority, and sought to take a leading part in the discussions of religion and philosophy,

and even to occupy the professorial chairs in the University of Paris, which was the most famous school of theology in Europe. The pretensions of these Mendicant Orders, and the power which they were exercising, caused alarm to the bishops and the other secular clergy, and to the authorities of the University. Out of the twelve chairs of Theology the clergy of the regular orders held seven, of which the Franciscans held one, and the Dominicans two; the canons of Paris also held three, and there were only two remaining for the secular clergy. Commands were issued suppressing one of the chairs occupied by Dominicans. The Dominicans laughed these commands to scorn, and with the Franciscans they refused to associate themselves with the authorities in demanding justice for the death of a scholar, who had been slain in a struggle between town and gown. The authorities thereupon deposed the Dominicans. Both parties appealed to Pope Innocent IV., who issued a decree placing the Mendicant Orders under the rule of the bishops. Innocent shortly after died, and his successor Alexander annulled the action of his predecessor, and restored to the Mendicant Orders the independent privileges which they previously enjoyed.

The Dominicans had gained a great victory, but their contest with the University and the secular clergy continued for a long time. The Francis-

cans were not prepared to follow the extreme measures taken by the Dominicans, and the two orders became more and more separated from each other. These Orders had, notwithstanding their vows of poverty, amassed such great riches and extensive possessions that their character and their reputation had suffered a great change. Many of you will remember how Chaucer held them up to ridicule in the Sompner's Tale, and Matthew Paris, though a Benedictine, can scarcely be accused of sinister passions when he represents the very great degeneracy into which they had fallen, compared with the continued adherence of the older orders to their monastic rule. The relaxation of the vow of poverty at length led to the destruction of the harmony of the Franciscan order. Some, disgusted at the struggle for wealth, and at the open immorality of many of their members, sought to bring about a reformation. Those who desired to return to the original rule of the order were named Spirituals, while those who opposed them were called Fratres de Communicate, and afterwards Conventuals. These wished that any change in the way of a return to their earlier mode of life should be gradual, and as occasion might require. But these two bodies became violently opposed to one another, and the Popes were one after another involved in the quarrel. The enthusiasm which marked the

Spirituals gave rise to peculiar religious views, and as so often happens in religious enthusiasm the views took a prophetic form, and prepared them for the doctrine that a new era was about to begin.<sup>1</sup> It was perhaps this that led them to take part in the political strife between Louis of Bavaria and Pope John. The expression of their political views excited the attention of the church, and the strong animosity of the Conventuals.

The Pope saw the danger to which the Papacy would be exposed by the wide dissemination of views so condemnatory of the state of the church, and he sought the assistance of the king in extirpating the heresy, while he commissioned the Inquisition to vindicate the papal authority and the orthodoxy of the church. Repeated Bulls were issued against members of the Spirituals or against the sect itself. The peasantry, not only of France, but of Italy, apparently took part in the struggle, and were roused to opposition to the Pope, while in many places the contest became identified with questions purely political. In Italy the Ghibellines

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1. Their views took form in a book called the Everlasting Gospel, ascribed to John of Parma containing three writings of Joachim, Abbot of Flora, in the kingdom of Naples. This was followed by another book of a similar prophetic character written as a kind of commentary on the Seven Seals of the Apocalypse. Milman has gone very fully into this period of Church History. Vid. Latin Christianity, Vol. V Bk. XII, Ch. 6.

made common cause with the Spirituals, while the Pope made the Guelphic Robert of Naples, Vicar of Italy. In Germany the Pope raised up Frederic of Austria as a rival of Louis of Bavaria to the imperial power, while Louis on the other hand regarded with friendliness the movement of the Spirituals for church reform.

It was this and similar circumstances which rendered it necessary to maintain the reliance of the Papacy on the royal power of France, and prevented its return from Avignon to Rome. A succession of weak Popes whose courts were the centres of intrigue and the grossest immorality was not calculated to elevate the church in the mind of Western Europe, while Italy generally was in a state of utter anarchy. Free companies that were little better than common freebooters, among whom the Englishman, Sir John Hawkwood, was a leader, wandered in perfect independence over Italy, plundering and destroying property, and it was therefore perfectly evident that the Pope must rule in Italy if the papal power was to be restored. Gregory XI. was the nephew of Clement VI., and was elected by a conclave of French cardinals. In opposition to the wishes of the cardinals, but at the urging of Catherine of Siena, who was renowned for her sanctity, he determined on visiting Italy, and if possible restoring the papal seat to the Eternal City. Disgusted, however, with the

affairs in Italy, and especially in Rome, he contemplated returning to the more quiet seat at Avignon, but worn out with anxiety and fatigue he died at Rome.

With him terminated the Babylonish captivity, to be followed by the Great Schism which long divided the church. On the meeting of the conclave for the election of a new Pope the Romans insisted that he should be a Roman, or at least an Italian. The excitement became intense, and the mob threatened the lives of those who did not vote for an Italian. After some days Bartholomew Pregnani, Archbishop of Bari, was elected, and took the name of Urban VI. He was a monk and lived the life of an ascetic, but he was coarse in his manners, rude in speech, and both in temporal and ecclesiastical affairs he was impulsive and harsh. Though he had presided over the papal Chancery at Avignon he was distasteful to the French cardinals. Those who had been present at his election reported to those who remained at Avignon that it had been a forced election, and in a council hastily summoned it was declared void. The French cardinals thereupon proceeded to elect a Frenchman, and the choice fell on Robert of Geneva, who is known as Clement VII. This was the beginning of the Schism, which for thirty-eight years divided Western christendom. The one Pope at Romé and the other at Avig-

non, both elected by legitimate cardinals, who was to decide which was the regular Pope? The church fell into sad confusion; Popes, bishops and monks struggled to surpass one another in intrigue. All church discipline failed, and religion seemed in the utter absence of any morality to afford a screen behind which vice of all kinds was shielded.

The Papacy had triumphed over the Empire, but it had fallen under the power of the French king. It had passed its zenith, and it never recovered the dignity or the authority which it had under Hildebrand or Innocent III., and its return from Avignon to Rome had not raised its importance, for the evil of its long subjection to France was not to be quickly overcome.

Without the aid of the Papacy the Gallican church was not again to re-acquire the immunities and the privileges of which she had been deprived. Under the Guises she did for a short time make her influence felt, and though cardinals were the regents, or the prime ministers of the kings, yet they were more devoted to the interests of the crown than to those of the church.

## LECTURE XXIX.<sup>1</sup>

### DEVELOPMENT OF PHILOSOPHIC THOUGHT.

The period of the Middle Ages was essentially one of adventure and of party strife, and the death of an Emperor or of a Pope was often the signal for a violent collision of opposing factions. It might, however, be expected that the monastic life would be free from these disturbing influences. From an early period it had been a theory of a large part of the Christian church that the only true Christian life was in entire separation from the world, in total abnegation of self, in solitude, asceticism and mortification; that the more remote a man was from his fellow men, the nearer he was to God. The

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1. Works consulted.—Milman's *Latin Christianit.* Vols. IV and V. *Annales*, Otto de Freisingen. *La Vie de St. Bernard*, par Geoffrey de Clairvaux. *La Vie de St. Bernard*, par Arnould de Bonnival, Guizot's *Collection des Memoires*. The *Epistles of St. Bernard*, edit. G. F. Eales. *Weltbesseren im Mittelalters*—Abelard, Arnold von Brescia, Die *Arnoldists*, von Adolf Hausrath. Arnold de Brescia, et les Hohenstauffen, par Geo. Guibal. *Geschichte der Philosophie von Johann E. Erdman*, B. I. *History of Philosophy*, by Dr. W. Winderband, Tr. by Jas. Tuft. *History of Philosophy*, by Geo. W. F. Hegel, Tr. by E. J. Haldane and Francis Sinson. *Geschichte der Stadt Rom.*, von Fred. Gregorovius, B. IV, V, VI.

life of the monk therefore was supposed to be passed in strict obedience to these principles and in penance, through which his passion for devotion might be satisfied. But the uniform changeless monotony of the life to which he subjected himself was not calculated to impart a higher and purer faith, or a truer and wider knowledge. It was indeed quite natural that a man of large and ambitious mind should break through the trammels of humiliation and misery, which he had laid on himself, and might devote himself to speculations, which were scarcely consistent with the strict regulations of his religious faith, or on the other hand he might be led to take part in the passions which were moving the outer world. A parish priest brought in contact with the faiths and fancies, and especially the needs and great spiritual wants of the souls to whom he ministered, was really not so likely to give himself to speculative studies, or to turn to the political interests of contending parties.

The promise of peace which the monastic life so readily offered it was not able to fulfil, and it was in the monasteries that the speculative spirit of the eleventh, twelfth and thirteenth centuries had its origin, and where its polemical form was most fully developed. The discussions between the nominalists and realists destroyed the harmony of the church, but more especially of the monastic life, for it was in these sacred

fraternities that such discussions were most fully carried on. In my last lecture I spoke of the quarrels which had arisen between the Dominican and Franciscan orders, and also of the separation of the Franciscans themselves into two bodies, which became violently opposed to one another, but it was also in the monasteries that there arose a strong opposition to the pretensions of the papacy. In the beginning of the twelfth century we find Geroh, Prior of Reichersberg, in the diocese of Salsburg, condemning in the strongest terms the careless life of the clergy, and especially their interference in political affairs. "The soldier of God," he wrote, "should not allow himself to be implicated in the affairs of the world. He should devote himself to the purpose for which he was consecrated. Let spiritual things be confided to the spiritually minded, and temporal matters to the men of the world."<sup>1</sup> While he adopted the views of Hildebrand against the marriage of the clergy, and maintained the supremacy of the church over temporal powers, he yet insisted that this did not imply that the Pope or the prelates should mix themselves up with secular affairs. He did not approve of bishops and abbots holding seigneuries, and spending the money extracted from the poor in the entertain-

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1. Geroh *De corrupto ecclesiae statu*. p. 24.

ment of men-at-arms. So strong were the terms in which he denounced the disorders of the church that Pope Alexander III. was obliged to impose silence on him. Even St. Bernard, Abbot of Clairvaux, the most strenuous upholder of the Papacy, and the most orthodox defender of papal doctrine, yet reproached the Papacy for its ambition, and the absorbing attention which it gave to temporal matters. "Why," he wrote to Pope Eugenius III., "do you interfere in a domain which is foreign to you? The Pope has more need of a mattock than of a sceptre. St. Peter did not show himself ornamented with precious stones, or silver, or gold, and mounted on a white palfrey, escorted by soldiers and surrounded by his ministers." And again, "Would that I may see the church of God, as in the olden days, when the apostles let down their nets, not to draw in silver and gold, but the souls of men."<sup>1</sup>

These ideas and these principles, which permeated the moral atmosphere of the twelfth century, found their strongest expression in the teaching of Abelard and his disciple Arnold of Brescia. In their speculations we see the struggles of the human understanding to overleap the barriers of Christian doctrine, which the church had established, and at the same time a

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1. Bernard's Letters, No. 238.

mutiny against the pretensions of the Sacerdotal order.

Not that it was only then that scholastic philosophy had its origin. Augustine may be called the first Christian philosopher, and his teaching was generally accepted by the Christian church, but from his death till the new impulse was given to learning in the ninth century, there was almost a stagnation in literary efforts, for political affairs engrossed attention. The establishment of the Teutonic nations on the ruins of the old Empire, and the toning down of the Teutonic intellect to the dominant culture of Greek and Roman civilization and of philosophic thought could only be the work of time, and it was not till the ninth century that the results began to show themselves. It is interesting to observe that it was among the Teutonic nations that the new development specially manifested itself, and it is scarcely to be blamed if they did not free themselves from the subtleties of philosophic thought to which they had fallen heir, and through which they came now to look at the mysteries of the Christian faith. It is quite foreign to my purpose to enter on any discussion of this deeply interesting subject. I only allude to it as it had some bearing on the great political events of the twelfth and thirteenth centuries, for it was impossible that this great effort of philosophic thought should confine itself to one sphere. The free-

dom of opinion that was engendered could not fail to question the claims of the church to dogmatise, or to exercise supreme authority in political affairs. This was the form in which the intellectual movement was especially distasteful to the Papacy, and this was the form which it assumed in the teaching of Arnold of Brescia, as it was later expressed in the *De Monarchia* of Dante, and which resulted in the martyrdom of Arnold, and the ban pronounced against Dante. The impulse to learning which was given by Charlemagne was not without representatives in the following centuries. Alcuin, whom Charles had induced to return from England to the continent, was succeeded by others at varied intervals, who took up similar lines of scientific and philosophical research, and theological learning. Before the close of the ninth century the German monk Gotschalk had revived the dark subject of predestination, which had been very fully discussed by Augustine, and Gotschalk's views met with strong opposition from Hincmar of Rheims, who persecuted him into imprisonment where he at length died. He had scarcely passed away when the mind of the church was disturbed by the teaching of Scotus Erigena. Like Alcuin he had acquired his passion for learning, and his philosophic tendency in some one of the monastic schools of Ireland, or of the Scottish Islands. On his removal to

France he was kindly received by Charles the Bald, at whose court he remained for some time. He subsequently set out on a pilgrimage, not to the birthplace or sepulchre of Christ, but to the home of Plato and Aristotle. He acquired a knowledge of Greek, and translated the works ascribed to Dionysius the Areopagite. His highest aim was to reconcile philosophic thought, especially as presented in Neo-Platonism, with the teaching of scripture, and in a special treatise he asserts the supremacy of reason, and confutes the doctrine of Augustine, and of Gotschalk, on predestination. His works came under the denunciation of the church, and of Pope Nicholas I., and he returned to England, where in monastic retirement he ended his days. Milman points out that he left a heritage of speculative and mystical thought which the monastic life of that day was ready to appropriate, and which ultimately developed into the mythology of the Romish church, and on the other hand into a new Christian theology not of the devout or reverential form, but that of the disputatious, bound by conventional scientific forms with a tendency to degenerate from severe investigation into a trial of technical skill.<sup>1</sup>

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1. Milman, *Lat. Christ.* Vol. III, p. 354. This estimate of Milman's may be quite true as far as regards purely theological questions, yet the disputes between the nominalists and realists, which undoubtedly largely grew out of the mystical speculations of Scotus, were a contribution,

It is almost impossible to reduce to the terms of modern thought the subjects which engaged the attention of the two opposing schools, yet it would be unjust to characterize their disputes as mere trials of technical skill. They were an attempt to explain the deep mysteries of the Christian faith by the principles of the prevailing philosophy, or rather an attempt to bring these into harmony. The atmosphere of Greek philosophy, and still more perhaps of Neo-platonism, was essentially distinct from that of Christianity, and the evil was in the attempt to harmonize them, or to solve the difficulties of the one by applying the principles of the other. The speculations of Gotschalk, or of Scotus Erigena, had perhaps little permanent result on the doctrines of the church. Though Anselm also failed to give a satisfactory solution to the many speculative conceptions which he sought to grasp, yet in the general tendency of his teaching he is clearer, and gives a more simple explanation of the Christian doctrines of which he treats. His conception of God as the most perfect and real being, and the inference of his existence from this pure conception, though not altogether satisfactory, was a very important departure, and a new line of thought, while he also held

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or an attempt to the solution of one of the great problems which have engaged the mind of philosophers since Plato propounded his doctrine of ideas, or Aristotle his logic, to the present day.

that it was impossible to make the subjects of faith comprehensible to the intellect.

But the man, who perhaps more than any other, gave expression to the views of that earlier renaissance, and whose prelections attracted the largest number of students, was Abelard. In the monasteries, the study of the writings of antiquity was receiving very general attention. The University of Paris was the centre to which all looked for light, but the monasteries of Cluny, of Corvey, and the Nouvelle Corbie were the homes of scholars, who gave themselves to the study of the classics of Roman and sometimes Greek literature, as well as to the writings of the early Christian fathers. Peter the Venerable, Abbot of Cluny, was noted for his extensive learning, and for the encouragement which he gave to the monks in their study of the ancient classics. He defended them from the attacks of the extremely orthodox in the church, and his reply to their denunciation was: "The brothers who discuss these questions are not led to do so by the feebleness of their faith, but by their love for knowledge. I know how they approach these problems, and discuss and solve them. I know that they are learned, are well exercised in the evolutions of thought, and religious." A sage, a noble reply coming to us from the twelfth century, the very middle of what we are accustomed to call the dark ages!

Though not at first a monk, Abelard found a home in the Abbey of St. Denis near Paris. He had already acquired a reputation as a scholar and teacher, but it was at St. Denis that he found a short leisure to develop his theological system. Urged by clamouring students, he soon retired from St. Denis to a private cell, granted him by the Count of Champagne, and here was visited by crowds of students, who waited eagerly on his teaching. Before he left St. Denis he had written a book in which he is said to have denied the unity of the Trinity. For this he was summoned before a council held at Soissons. Here he was condemned to seclusion in a monastery, and the book was ordered to be burnt. Abelard had received his early teaching from William of Champeaux, but he later repudiated his master's views, and William became, with St. Bernard, his most bitter opponent; but neither of these men was able to contend with the subtle logic, and the great learning of Abelard. The sanctity of St. Bernard's life, however, his political sagacity, and his untiring devotion to the church, gained him great influence with the Popes, and with the more orthodox circles. Abelard was summoned on a charge of heresy before another council which was held at Sens. Here Abelard saw that he was not likely to receive impartial judgment, and he appealed to Rome. It is difficult to understand the object of

this appeal, as he must have known that the weak Innocent II. was completely under the influence of St. Bernard, and as might have been expected St. Bernard gained a complete triumph. Abelard, absent and unheard,<sup>1</sup> was condemned to silence, while his followers were excommunicated and the discussion of religious matters was strictly forbidden.<sup>2</sup> Peter the Venerable, Abbot of Cluny, who had shown himself favourable to the revived study of the classics, and of the writings of the fathers, was not unfriendly to the speculations of scholasticism, and opened the doors of his monastery to this heretic under the ban of the church, and there before two years had run, Abelard died.<sup>3</sup> Peter had sought to bring about a reconciliation between Abelard and his virulent opponent. St. Bernard had begun to realize that public opinion looked with disfavour on his harsh treatment of Abelard, and he was now ready to accept the intercession of Peter. Abelard withdrew some of the strongest statements in his writings, and with this St. Bernard expressed himself satisfied.

I mentioned that Geroh, Abbot of Reichers-

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1. Abelard had been seized by sickness on his way to Rome, and did not appear before the Pontiff.

2. The Rescript of Pope Innocent against Abelard is given in Bernard's Letter, 194.

3. Rather at St. Marcel, near Chalon, sur Saone where Peter had sent him for a little change as the climate there was milder.

berg, had strongly condemned the interference of the papacy in political affairs, and that St. Bernard had expressed very similar views. Arnold de Brescia now came forward as a strong opponent of the double character of the papacy, combining spiritual with temporal or political authority.

Brescia is a small town situated on the southern slope of the Alps in a district rendered salubrious by the pure mountain breezes, and watered by the Mincio, whose valleys are perhaps the most fertile in Italy, while the hills around inclose most valuable minerals. The Brescians therefore enjoyed great advantages, and were relieved from many of the cares and anxieties to which the inhabitants of the less fertile and less healthy districts of Italy were constantly subject. It was under these circumstances that the inhabitants of that little upland town became noted for their studious, thoughtful habits, and for the attention which they gave to religious and political questions. They entered with zeal into the reforms proposed by Hildebrand, while at the command of the Pope they sent contingents to the crusading armies. When Bishop Adelman returned after the council of 1059, and announced to his assembled clergy the conclusions of Pope Nicholas II. against simony, the clergy, who evidently sympathized with the prevailing state of affairs,

attacked him and left him for dead. The people, however, took the part of the bishop, and Brescia became divided into two politico-religious factions. It was apparently in these circumstances that the sect of the Patari found a home in Brescia, and it was also under these circumstances that the attention of the young Arnold was directed to a consideration of the evils arising from the double character of the papacy. He early embraced the life of an ecclesiastic, and placed himself under the teaching of Abelard, with whom he became a favourite. Arnold's mind, however, was not speculative, but practical. He did not follow his master into the subtleties of scholasticism; his attention was rather directed to the condition of the Papacy, and especially of Rome. We may quote the words of St. Bernard in his letter to Pope Eugenius as conveying information regarding the condition of the Roman people. "Your flock," he writes, "is the Roman people, and this word expresses all. No fact is better known to the whole world than their boastful vanity; a race restless, factious, impracticable, submissive only when it is powerless to resist." Adrian IV., Nicholas Breakspear, the only Englishman who ever occupied the papal throne, cries in despair: "Oh that I had never quited England, my country, and my cloister. I have found in this holy seat so much misery that any

bitterness of my past life appears pleasantness in comparison. It is quite right that the Pope should call himself the servant of servants, for he is enslaved to the servile cupidity of the Romans." "The dialect of the Romans," says Dante, "is the most corrupt of all the dialects of Italy, and this is not astonishing for the language is only in keeping with their manners." An energetic people, they had nothing to which this energy might be directed; they had no commerce, no industries, and even no proper instruction. Petrarch, writing a little later, exclaims, "Who is to-day on all that concerns Rome so ignorant as the Romans?"

We must attribute the misery and the vices of the Romans to the deplorable state of the government. The Roman noblesse was made up of men of very different origin. In the twelfth century, the two most prominent families were the Frangipani and the Pierleoni, both of whom were of humble origin, though the Frangipani claimed a legendary distinction. The Pierleoni came from the Ghetto or Jewish quarter. There were few Jews in Rome, but these had accumulated wealth, and had risen to distinction, and might even have been found holding offices in the papal palace, while Innocent II. is said to have been of Jewish descent. The young nobles also sought in marriage some Jessica, the heiress of some money-grubbing Shylock, by

whose wealth they might hope to maintain a position worthy of their name and title. It was no doubt by some connection of this kind that the Pierleoni had risen to importance, and taken their place among the Roman aristocracy. During the war of investiture the nobles and barons of Rome had increased their power, while at the same time the authority of the Popes had been much diminished. But with the increase in power of the aristocracy, and the growing weakness of the Papacy, there arose in the minds of many vague visions of a past greatness which they thought it possible to restore. The study of Roman law was then receiving much attention, and it was pleasant to recall the works, and the lives of the Catos and the Scipios, or of Ulpian of Gaius and Tribonian, and the influence which these had exerted in the gradual framing of the Roman constitution. But any contemplated reform could not lightly be achieved except through a revolution, and for the success of a revolution the concurrence of the Roman people was necessary. Great difficulties, however, presented themselves; the aristocracy was divided by jealousies, which often assumed the bitterest forms, while the people generally had been so long sunk in inertness, in ignorance, and blindness to their better interests, that it was now impossible to rouse them to efforts which

might result in any improvement of their condition.

But the questions involved were important, for they implied the overthrow of the temporal power of the Papacy, and a general change in the government of the Romish church. The movement therefore was certain to excite the opposition of the whole papal party. Bernard of Clairvaux, who at an earlier period had denounced in very strong terms the connection of the temporal and spiritual powers of the Papacy, now awakened to the danger which was threatening. In a circular letter addressed to the Romans he wrote, that every Christian should resent the injury done to the Pontiff.

The aristocracy must undoubtedly take the lead in any great political movement, but unfortunately they were not only not united among themselves, but there was no sympathy between them and the Roman people. These had suffered too much from their tyranny and violent anarchy to repose any confidence in their promises now, and give them a support, which by increasing their power might render their hands only so much the heavier. Indeed the two classes had been long in open hostility with one another, while either was ranged against the Papacy.

In 1116 Pascal II. appointed against the

wish of the Roman people the son of Pierleoni<sup>1</sup> to the Prefecture of Rome. The castle of the Pierleoni was one of the strongest in the city, but it was now attacked by the enraged populace. Pierleoni besought the assistance of the Pope, but the contingent which he sent was driven back, and Pascal himself fled from the city, and the young Prefect was taken prisoner. This insurrection extended to the Campagna, and an attempt was made to give a free constitution to the city. The end of the summer, however, brought the party war to a close. In the following Easter, at the invitation of the Romans and the people of the Campagna, the Emperor came to Rome, and was received by Giovanni Frangipani, and some of the Campagnian nobles, and Pascal fled, never again to return to the city. He died in the following January, and some five days after John of Gaeta was unanimously elected Pope, and took the name of Gelasius II. He was virtually a creature of the late Pope, and was not popular. The Conclave met in Sta. Maria on the Palatine, which was within the district of the Frangipani, and was overlooked by their castle. Before the Conclave separated the Frangipani broke in the doors of the church. The young Cencius Frangipani seized the Pontiff by the throat, threw him down, and kicked him with his spurred boot, while

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1. Pietro Leone was the original form of the name.

several of the cardinals were bound hand and foot, and thrown over the walls. The Pontiff, more dead than alive, was dragged into the castle of the Frangipani, and retained a prisoner, but shortly after escaping, he fled to France. The Emperor sided with the Frangipani in their opposition to Gelasius, and set up an anti-pope in the person of the Portuguese Marius, Archbishop of Braja. Presenting him to the people the Emperor asked whether they would accept him as Pope, to which they replied, "We will." The new Pope took the name of Gregory VIII. Gelasius thundered his anathemas against his rival, and against the Emperor. He returned to Rome, but only again to flee from the city, and in virtual exile shortly died. He was followed by three Popes in rapid succession, Calixtus II., Honorius II., and Innocent II. To Innocent the Frangipani set up a rival, another anti-pope, and named one of their own family to the pontifical chair. He took the name of Anacletus II., but was unable to maintain his claim for any length of time.

In this state of social chaos the condition of Rome seemed utterly hopeless. The city was divided into parties, whether of nobles or people, and as there was no prospect of bringing them into harmony, so without united action there was no possibility of establishing order, or of giving to Rome a free constitution.

It was when the city was in this unsatisfactory state that Arnold of Brescia first visited it. After his stay in France with Abelard he had returned to his native city. There is no doubt that he had been included in the papal anathemas, thundered against Abelard and his followers, and had at that time attracted the attention of St. Bernard, who, some two years before the death of Abelard in 1140, wrote to Innocent warning him against Arnold, and pouring out his maledictions. In the same year he wrote a letter to the Bishop of Constance, in which he urges him not to give shelter to Arnold, who appears to have been at Constance, or in the neighborhood, at that time. He had not a word to say against Arnold's manner of life, but he denounced him as the author of tumult and sedition. Pope Innocent died in 1143, and was succeeded by Celestine II., who had himself been a pupil of Abelard, and a protector of Arnold. Great hopes might now have been entertained of a more liberal papal policy, but Celestine only lived as Pope six months, when one of the family of Pierleoni became Pope as Lucius II. This new Pope strove to establish papal authority in Rome, and himself led the pontifical party against the newly formed Senate and the people. He was killed at the head of his soldiers. Eugenius III., who, on the death of Lucius, was raised to the papal throne, was more able than any of his

immediate predecessors, but was also obliged to leave Rome and take refuge in France.

Arnold of Brescia was an enthusiast, and would have boldly laid the reforming hand on all the existing powers. He would have separated the church entirely from all the temporal concerns of the world. He would have reduced the clergy to the primitive and apostolic poverty. They were to be ministers of religion and no more. In all that concerned the relations of the church to the state it was to submit to the rule of the civil powers. Its estates were to be confiscated, and the clergy to be supported by the tithes and offerings of the people; the state was to be a republic with the people as sovereign, and the popular voice to be expressed in a democratic senate.

No doubt Arnold had taken his ideas from the constitutions of the Lombard republics, and when he propounded his political theories they were not only readily accepted by Brescia, but by North Italy generally, and they even became popular in Rome. But reforms so radical in their character could not but call forth the most violent opposition from the Papacy, which had for centuries striven to subject all temporal power to its supreme authority. Arnold's theory of a republican state was essentially repugnant to its strong monarchical views. When he came to Rome he found that steps had already

been taken to establish a republic. The Romans had elected a Prefect and a Senate, which consisted of fifty-six members, and was apparently modelled after the old Roman Senate, for the city was divided into fourteen districts, each of which was to elect four senators. A new coinage was issued bearing the old legendary, "S.P. Q.R." The Senate also established courts of justice before which it claimed the right to summon priests, who might be guilty of crimes coming under civil jurisdiction.

The republicans governed Rome. They had driven out the principal chiefs of the pontifical party. They even aspired to gain possession of the castle of St. Angelo, and had rendered themselves masters of both banks of the Tiber.

It is wrong to attribute to Arnold the great insurrection which had taken place at Rome, but there is no doubt that on his arrival in the city he threw himself into the movement with all the energy of his enthusiastic nature. He gave it the full vigour of his personal talents, while he was encouraged in his hopes, in his social ecclesiastical idea of the separation of the temporal from the spiritual power of the Papacy.

He formed in Rome a sect or society which came to be known as the Lombardists or Arnoldists, the fundamental principle of which was the return of the clergy to apostolic poverty and purity of morals. The Senate took up this doc-

trine so as to carry it out on its political side, as this was the natural tendency of the mind of the Roman people, which ever and again was eager to give to ecclesiastical affairs a political bias. But this was the direction in which the movement was certain to call forth the most violent opposition. This democratic effort served to unite the interests of the Empire with those of the Papacy. The Romans had indeed asked the assistance of Conrad III., with the promise that they would secure to him the imperial crown, but Conrad's death destroyed any hopes which might have been entertained.

Frederic of Hohenstauffen came to the throne with strong monarchical feelings, while Adrian IV. succeeded to the Papacy, and inspired it with new life and vigour, so Emperor and Pope by their united energies succeeded in suppressing the democratic effort of the Romans. Arnold, who, though not the originator of the movement, had yet become its very life, was imprisoned, condemned to the stake, and his ashes thrown into the Tiber.

This great political insurrection was one side of that ecclesiastical and spiritual change which mediaeval philosophy had brought about, but the combined efforts of the Papacy and the Empire were too powerful to permit any alteration in the existing state of things. Dante, more than a century later, in his *De Monarchia*, developed

similar views with those of Arnold, and met with the church's anathemas, while still later the Romans again attempted to found a republic when Cola di Reinzi became the soul of the movement. But all these efforts were fruitless, and Rome remained under the spiritual despotism of the Papacy equally oppressive with the political despotism of the Empire.

## LECTURE XXX.<sup>1</sup>

### THE ECONOMY OF THE MIDDLE AGES.

It is very difficult if not impossible to obtain any satisfactory knowledge of the political economy of the Middle Ages, not only because there are no adequate or reliable sources of information, but also because of the want of any uniform system. You will have gathered from my previous lectures that down to the fourteenth century there was no national life, as there was no uniform system of government, and there could therefore be no uniform system of political economy. Each feudatory, each republic, and each commune had its own statutes, and its own laws and customs, with its own rules of administration. There was an infinite variety of weights and measures, as there was an infinite variety of

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1. Books consulted:—Growth of English Industry and Commerce, by Wm. Cunningham, D. D. *Dissertazione sopra la Antichità Italiana* di L. A. Muratori. *Delle Economie politiche del medio evo* del cavaliere Luigi Cibrario. *Histoire du Commerce de la France* par H. Pigeonneau. *History of Agriculture and Prices in England* by James E. Th. Rogers. Vols. I and II. *Short History of English Commerce and Industry* by L. L. Price. *Documents relatifs à l'Administration financière en France 1412-1532*, par Mons. G. Jacque. *Die Entstehung der deutschen Städtgemeinde* von Georg von Below.

coinage, the circulation of which was under feudal regulations. There were no sanitary regulations. The towns were enclosed within high walls, and surrounded with a fosse, which was generally filled with stagnant water, the streets were narrow and tortuous, and into them all manner of garbage was thrown. This state of affairs was certainly not conducive to health, and we can scarcely wonder at the fatality attendant on those pests which from time to time prevailed in Europe. There were indeed no laws which provided for cleanliness of life, though there were statutes regarding the solubrity of drinking water, and others which prohibited the selling of diseased meat, but from the want of a proper police administration it was difficult to enforce them. Charlemagne ordered certain sanitary precautions,<sup>1</sup> but these were very inadequate, and any police administration which he established seems to have ceased shortly after his death.

During the feudal period the rural population was almost entirely composed of serfs, who living on the land of the seigneur had little interest in the soil which they cultivated. A good deal of the produce passed into the seigneur's

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1. Baluze, B. I. p. 464, and in the *Capitulare de Villis*, very minute directions are given as to the measures to be observed in the employment of servants, and as to the whole management of the farmyard, with the regulating of the markets.

granary, while a portion of the serf's time was spent in the seigneur's service. He also assisted in keeping the roads and bridges in good order, and contributed to the reparation of the walls of the castle.

It is impossible to form any idea of the number of the rural population of any of the countries of Europe, and it is little more than a rough guess which we can form of the population of the towns. Galvano Fiamma, writing in the end of the thirteenth century, claims that Milan had then a larger population than any other city in Europe, and numbered two hundred thousand inhabitants. Paris, however, is calculated much about the same time to have had two hundred and fifteen thousand and M. De La Malle cites a manuscript of 1328, which represents Paris as having a population of four hundred and twenty-seven thousand, six hundred and eighty-four. He also calculates the population of the whole of France at the same time at thirty-four millions, six hundred and twenty-five thousand, two hundred and ninety-nine.<sup>1</sup> According to the subsidy roll of 1377 the population of London was thirty-five thousand. These calculations, however, can only be proximate, they are based on the number of houses, and so many inhabitants for each. The population of the Italian cities is

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1. This is undoubtedly an over estimate. It rests on data which are very uncertain.

very generally calculated on the basis of six persons to a hearth, (Fuoco) while seven persons are allowed to a house in Paris, and some writers ascribe eight to a household. This, of course, very seriously affects the calculation as to the whole population.

The towns of Europe had nearly all, by the end of the fourteenth century, asserted their independence, and were rapidly increasing in population, in wealth and commercial industry. The towns of Flanders, and of Italy, were the centres of varied manufactures; those of Flanders in the coarser fabrics, those of Italy in the finer, such as silks and velvets. The towns of France did not till a later period establish manufactures, while England till the reign of Edward I. depended almost entirely on imported articles. England may be regarded as at that time entering on a new economic policy. Hitherto the towns and villages had been very much isolated, and the connection of England with her possessions in France, which had led to unpleasant complications, had diverted attention from home development. With the accession of Edward I. to the throne there was begun a policy which was vigourously directed to national aims. The Magna Charta of John's reign had at once shown the power of the Commons,<sup>1</sup> and the

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1. For the barons had found it necessary to consult the interests of the commons quite as much as their own.

power of the merchants and traders had strengthened their influence by affording that security in which alone trade can be developed. About the same time there was an important immigration of Flemish and other craftsmen, as well as of bankers, Jews and Lombards, who lent money which was invested in trading and industrial enterprises. The interest may have been usurious, but the profits of the borrowers were great, while legal subterfuges were often discovered by which the borrower might baffle the exorbitant demands of the lender. The Jews were looked on with favour, so long as they served in the present necessities, but were at length driven from the kingdom.

The feudal system gave very little opportunity for the development of trade. The peasant sold in the market the produce of his land, or such portions of it as were not absorbed by the exactions of his seigneur, while the artisan exposed in his shop the fabric which he himself had manufactured. The retail merchants were simply peddlers who travelled from village to village, and exposed their articles in the most attractive form. The perambulations of these itinerant merchants were not without danger, as the several countries were infested with brigands, but on the other hand these peddlers were not unwelcome guests to the families of the chatelain and the cottager, to whom they were able to impart a

knowledge of what was going on in the world around. These merchants made their purchases at the fairs, which were held three or four times a year in the principal towns that were granted the privilege, and where were exposed the wares which were brought by traders from Flanders, or more especially from Italy. The Italian traders brought not merely the product of their own looms but also rich eastern wares. After the crusades, however, these were brought in through the southern ports of France. Of the French fairs the principal were those of Paris, of Rouen, and Dijon, but those of Champagne were perhaps the oldest, and enjoyed a special reputation.<sup>1</sup> They were held in the towns of Troyes, of Provins, of Bar sur Aube, and of Lagny. Situated as they were in the centre of France these towns became good distributing points for the northern and western parts, and were therefore much frequented. The commerce between Italy and France was not always by water. There was a land route through Savoy and Burgundy, and the transferring of goods between Genoa and Paris occupied thirty-five days. Perhaps the land route was safer, as the Mediterranean was infested by pirates. Against these the proprietor of the goods which had been

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1. Privileges for holding the fairs and regulations as to the conduct of them are specified in repeated capitularies and afterwards in the edicts of Philip Le Bel. Bou-taric, Philip Le Bel, p. 353. Pigeonneau, T. II. p. 214.

taken had only a partial recourse. He laid his claim before the magistrates, who demanded indemnification for the losses suffered from the city to which the pirate belonged. If satisfaction was refused, letters of Marque were issued which permitted the complainant to indemnify himself by taking possession of any goods, which might belong to the nation of which the pirate was a citizen.<sup>1</sup>

There were several restrictions on commerce. There were for instance heavy import as well as export custom dues, besides heavy exactions for certain privileges. Thus the merchants of Hainault, as well as those of Italy, and afterwards those of Portugal, had to pay sometimes exorbitant exactions for the privileges of trading, which almost resulted in a monopoly. The Italian merchants formed themselves into a corporation adopting a special seal, and were the better prepared to enter into negotiations with foreign merchants.<sup>2</sup> They exercised in some respect the same influence in this foreign commerce that the merchant-guild did in England, where it really acquired the monopoly of trade.

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1. This I believe was the earliest form of letters of Marque.

2. These Italian merchants became the bankers of the period and took the place in England which the Jews had previously held. The term Lombard came to be applied to bankers generally, and the street in London where the banks are congregated is still called Lombard Street.

Philip Augustus extended the walls of Paris, paved its streets and squares, and established municipal police regulations. St. Louis issued further regulations, while King John, in 1350, took measures to provide for the municipal affairs of Paris, which are regarded as superior to those of any other city in Europe, and somewhat in advance of the time.

Frederic II. issued rules of municipal policy in Naples, and some towns, especially in Italy, showed solicitude as to the proper erection of houses and the embellishments of the streets.<sup>1</sup>

But perhaps the most important regulations of the period were those of the markets, and the restrictions which were laid on the buying and selling of certain articles. The right of having a market was regarded as a very great privilege. In the absence of a regular police force it became necessary to exercise a close scrutiny over transactions of buying and selling. An article might be stolen, and then sold to another party. Private sales therefore were very generally forbidden, especially in England. Every article had to be sold in the public market, and before two witnesses who should vouch for its being a bona fide sale. The consequence was that the right to hold a market was very generally restricted.

In the Middle Ages they had no idea of the

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1. Cibrario *Economia politica del medio evo*. T. II. p. 16.

natural laws of political economy. They didn't understand that commerce is inimical to any restrictions, that when it is allowed to exercise its natural impulse it will find the level which is most serviceable to the public wants. The right of the producer over his goods was however not recognized. The amount of grain which a farmer might be supposed to require for his family, and also what would be necessary for sowing in the spring was duly calculated, and the balance might be sold in the market at a fixed price, which was generally far more favourable for the buyer than the seller. Sometimes a heavy tax was levied for the right of selling, or a license had to be purchased at a heavy cost. The exportation of grain, of wine, and other products of nature, as well as manufactures, was expressly prohibited except on the payment of a heavy export tax. In the reign of the first and third Edwards there was a heavy tax on the exportation of wool and woolfels. In this case, however, it was a protective duty, to prevent the exportation of the raw material to Flanders, or sometimes to Italy, where it was manufactured, and in this shape returned to England. The purpose was to build up English manufactures.

In the month of February, 1375, when Piedmont was threatened with a great famine, a parliament was summoned for the purpose of

affording relief. It had recourse to the following expedients: 1. The exportation of corn was prohibited on a penalty of ten lire per bushel, (Staio) and the confiscation of the grain. 2. That each producer should state the quantity of grain which he had and give a description. 3. That the bushel of wheat was to be sold for fifty Viennese solidi,<sup>1</sup> and not more, the bushel of rye for forty, the bushel of spelt for sixteen, and of oats for twelve, and a penalty of forty solidi was laid on anyone who should disobey, as well the buyer as the seller. 4. That the state (i Communi) should pay two solidi for every bushel to the seller of wheat. 5. That all the land which could raise wheat should do so free from the imposition of a new tax. These regulations, however, caused such great disorder that they were rescinded in the following month. An involuntary homage to the proper principle of political economy. The result had been not to relieve, but rather to increase the scarcity, and the revocation of the stringent measures was a

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1. It is very difficult to determine the value of the coinage of the Middle Ages. There was a golden as also a silver solidus, but it appears to be the silver solidus which was used in Lombardy, and it was perhaps worth an English shilling. According to the Salic law 600 denarii equalled 15 solidi. Under Charlemagne 12 denarii formed a solidus. In the above quotation it is evidently the small solidus, which is intended. Cibrario gives 32 solidi—no doubt the Sou Viennese to the Florin. Muratori says 8 Florins were equal to an ounce of gold. Perhaps the 50 Viennese Solidi equalled a half crown or 60 cents.

concession to the clamours of the people, rather than to the prevalence of clearer views of political economy.<sup>1</sup>

Something similar, and indeed under similar circumstances, occurred in France in the reign of Philip Le Bel.<sup>2</sup> But Philip in his arbitrariness did not remove the restrictions which had been issued. He rather adopted stringent measures against the discontented, and the trees of every avenue in Paris were adorned with the body of some unfortunate victim who had dared to disobey the royal orders.

My principal object in calling your attention to the political economy of the Middle Ages is chiefly to consider the revenues of the crown.

In England the Pipe rolls and the Year-Books afford a good deal of information on this subject. The revenue of the Royal Exchequer was made up largely of feudal dues. The English king was sovereign of the whole realm, and the feudal lords who had holdings of him had to pay the dues which he was at liberty to exact. The incidents of feudalism, to which we have already referred, came in with the Norman William. There was also a revenue from forest

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1. Cibrario, T. II, p. 28.

2. Sismondi, *Hist. des Français*, T. IX, p. 179. But though Philip's ordinance was not legally annulled it was after some time allowed to fall into abeyance. In 1305 he issued another ordinance again fixing the maximim, but at the end of a month he was obliged to revoke it.

lands, and from the towns, especially of such as fell within the royal domains. One of the feudal rights was the claim of military service. This was commuted into payment of Scutage, and though this was proposed by Henry I. it was only carried into force by Henry II. There were other sources of revenue of a more public character, as Danegeld, which, however, was levied with some irregularity by the Norman kings, and in the reign of Henry II. Carucage, which was essentially a land tax, was substituted for it.

The revenues of the French crown afford a much more intricate subject of inquiry, as they were more irregular, and depended to a greater extent on the will of the king.<sup>1</sup>

The revenues of the king as seigneur of the royal domains under the Capetians differed from those of his great feudatories not in kind but in amount. His receipts were greater than theirs just in proportion as his fiefs exceeded the extent or value of their fiefs. The feudal dues were coming to them as they were the owners in pos-

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1. M. Boutaric has devoted much attention to this subject and has given us the result of his study in the ninth and tenth books of his *History of Philip Le Bel*. Not less valuable is the collection of documents of the financial administration of France by M. Jacqueton which I have closely consulted. But while I have studied several other writers on the subject, I have followed somewhat closely the short sketch furnished by Sir James Stephens in his thirteenth lecture on the *History of France*.

session of extensive land, buildings, forests, streams, etc., and were entitled to the dues arising from these. An ignoble vassal or roturier, holding land within the royal domain, owed to the king as his seigneur: 1. A personal sens or capitation tax. 2. An annual sens or feu, or quit rent on the land. 3. Lods et Ventes, that is a fine on any change of ownership. 4. Corvees or labour on the public roads of the seigneurie, or any works of the seigneur. 5. The obligation of grinding his corn at the seigneurial mills, or baking his bread at the ovens of the seigneur, and not elsewhere. 6. License fees for hunting or fishing, and also for marriage. 7. Droit de Gite or purveyance, the duty of supplying conveyances as well as board and lodging to the royal seigneur on a royal progress. 8. Droit de Prise, the duty of supplying on credit during a certain period such articles of domestic consumption as might be required by the royal household.

Some of these dues may have been changed from time to time, but this statement may give some idea of the privileges and claims of the royal seigneur in his seigneurie, and which were the same as each feudal lord had a right to exact. But over and above these dues claimed by him as seigneur of the royal domains there were others, to which he had a right as Grand Suzerain of the realm. In consequence the inter-relations of the king with the feudal lords were more or less

close. Any unauthorized change might in some way or other be prejudicial to the interests of the king, considered as the last and highest of the feudal lords. He, by whom any such injury was done, was said to *abreger son fief*. Now a fief might be so abregé by granting it to a church in mortmain, for such a grant would extinguish several of the seigneurial dues, as well as the fine of alienation, or the relief on the death of each successive tenant. This led to several ordinances regulating, restraining, or prohibiting grants to ecclesiastical corporations in mortmain.<sup>1</sup> The result was the interdicting of any seigneur from granting his seigneurie in part, or as a whole, except with the express license of the king as supreme Suzerain. For such license the king demanded large dues, and this right was called the *Droit d'Amortissement*. Of a similar character was the right which the king had as Suzerain to what is called the *Droit de Franc-fief*, that is the right to exact dues on any transference of a fief from a noble to an ignoble tenant. It was maintained that by such a transfer there was a legal presumption that the roturier would be less competent than the previous holder, the feudal lord, to perform the obligations on which the fief was held. To facilitate a transfer of such seigneurial

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1. Something similar in England called forth the statute *De Religiosis* or *Mortmain*.

property, the king's license was necessary, the more, as since the crusades, and the reign of Philip Augustus, the roturier, who had purchased an estate, was ennobled, and for this double privilege a fine was exacted varying from one to three years' rent of the fief. Very similar was the Droit d'Aubain, that is the right to succeed to an estate, moveable or immoveable, of any alien dying within the realm. We must bear in mind that under the first two dynasties laws were not local but personal, and a stranger was therefore entitled to the rights of a citizen of the place from which he came; he was able to assert the rights which he was supposed to bring with him. He was nevertheless obliged to put himself under the protection of some lord, and in this way he virtually put himself in the position of a bondsman. Under such circumstances it was better to put himself under the king, and to become his liegeman, but the result of such a relationship was that on his death his possessions were escheated to the crown.

Now besides these and some minor sources of revenue, to which the king was entitled, either as seigneur or as Suzerain of the kingdom, there were as we before mentioned the pecuniary rights which a king had as administrator of the central government. These were: 1. Droit de Joyeux Avenement, that is the right of each succeeding monarch on his accession to a tribute for

confirming in his privileges any person or persons in possession of special advantages by virtue of a royal grant, such as all corporate bodies, all naturalized aliens, and all holders of public office. 2. *Droit de Maitrisse*, the charge which every apprentice paid when he became a master workman; an apprentice who claimed to be admitted to trade as a draper had to pay three thousand livres. A druggist paid a sum varying from five to six thousand livres.<sup>1</sup> Dispensation from serving an apprenticeship might be obtained at a very high tariff. 3. *Droit de Greffe*, the right of selling various offices connected with the custody of judicial records or notarial acts, and often special offices were created for the express purpose of selling them. This fatal abuse of the royal prerogative was a constant source of remonstrance by the States General, and the Parliament of Paris, but the abuse continued to the very eve of the French Revolution. In the reign of Louis XIV. the number of these offices which were vendible was over four thousand, and the prices were enormous. At the close of the seventeenth century

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1. In England where there were guilds, these payments went into the treasury of the gild, and it was no doubt the same in other countries where guilds existed, especially in Flanders. The continued opposition of the French king to guilds was no doubt due to the fact that the *Droit de Maitrisse* added considerably to the revenue of the French crown. Vid. Gross' *Gildmerchant*, Vol. II, *Passim*.

half a million of livres was exacted from each of the officers of state, from the captain of the Royal Guards, and the first gentleman of the Royal Chamber, while the office of the great Chamberlain was sold for double that sum. The offices thus purchased brought with them many privileges and immunities, such as were considered as belonging only to the nobles. Sometimes these offices were purchased to be hereditary in the family of the purchaser, and in such a case the condition was the payment of an annual income tax called *Paulette*. 4. The king had control over the coinage. In earlier times the king issued a coinage for circulation in his own fief, later he claimed a percentage on all such coinage. Frequently he issued a debased coinage.

We now pass to the consideration of the extraordinary taxes, and we shall just mention two or three of the more important of these. 1. A tax on property, moveable and immovable. 2. A capitation tax over the whole of the kingdom, arranged on a graduation scale, the people of France being divided into twenty-two classes. This tax was supposed to be paid by all, but the clergy were allowed to purchase an exemption from it on very easy terms, while the nobles were permitted to appoint their own assessors, so that the tax like so many others pressed most largely on the roturiers. 3. There was also a tax of a tenth on income.

Besides these which were fixed taxes there were others. 1. Aides, these were granted by the States General, or frequently by the different departments in their provincial assemblies. These Aides were very generally farmed out, and thus became a source of lucrative patronage to the crown, and of excessive oppression to the people. 2. Douanes, or Revenue of Customs. In the greater feudatories it was the custom to forbid the removal of agricultural products, such as corn or wine, until it was determined that there was enough to supply the wants of the inhabitants. The surplus might then be sold, but a license had to be obtained for this purpose, and the sum paid for this license depended almost entirely on the wants of the seigneur. This was carried on to a much greater extent by the kings. In time it passed over into an exportation duty, which varied from time to time and on different articles.

Duties on imports—sometimes each city had the right of levying this duty, and might determine its character and extent. For this right a large sum was paid, which went into the treasury of the Commune, but was generally transferred to the credit of the aides which the king exacted.

The stamp duty imposed on all bills of exchange as well as on cards, dice, gold, silver-plate, and even wrought-iron.

Gabelle, or duty on salt. In the fourteenth century salt was made the subject of a royal monopoly. The royal salt merchant paid the producer of the salt according to a regular tariff. Another tariff determined the rate at which the consumer was to receive his supplies, and each householder was compelled four times a year to buy as much salt as was determined by a third tariff to be the proper quantity, according to the number and age of each member of the family. This tax, arranged in such an arbitrary manner, was the most odious as it was the most oppressive.

It will not be necessary to point out with any minuteness the manner in which these taxes were raised; we shall merely state that those arising from feudal dues, whether as seigneur or Grand Suzerain, were paid to certain royal treasurers called *Changeurs du Tresor*. The proceeds of the general revenue, including customs and such were made payable to an officer who bore the title of Receiver-General.

Those taxes which were granted by the States General, or by the states of the provinces, were not granted year by year as at present in Britain, but for a definite period of years, or for the lifetime of the sovereign, and during these periods the sovereign was independent of any further grants. It will be perfectly evident that the control of the Exchequer was

entirely in the hands of the crown, and that it therefore could not exercise its legitimate influence. We may further remark :

1. The principle that the people could not be lawfully taxed, except with their own consent, was admitted in theory in France but not carried into practice.

2. The representatives of the people, who were assembled in the States General, were not summoned except in extreme exigencies, and when they did meet had no legislative or executive power, and so were incompetent to wield control over the Exchequer as a weapon of constitutional liberty.

3. The want of an independent system of judicature deprived the people of any power to resist the assumptions and exactions of the crown.

4. The royal prerogatives were so vast in the way of patronage, or in regard to the regulations of trade, as to exempt the king from any dependence on the people.

5. The permanent allotment of subsidies for special purposes, as for instance the permanent appropriation for the army, placed all authority in the hands of the king.

6. The immunities of the privileged orders made them unite with the crown against any effort of the people to gain control of the revenue.

7. The right, or supposed right, of the crown to anticipate the revenue by loans made without consent of the States General, or even of the Parliament of Paris, tended still further to render it independent.

8. There was no effective plan of rendering and auditing the accounts of the kingdom.

Now from these facts it will be quite evident that the people had no control over the financial affairs of the kingdom, and had no power to restrain the monarchy in its march to absolutism. The revenue was of such a character as to render the king quite independent both of the States General, and the Parliament of Paris, while these had no real influence over any part of the royal administration. If on any occasion the States General did grant subsidies to the crown, this right failed to produce its legitimate results, because the States General had no executive power. The administration of the finances never was in their hands.

In England, parliament even in the earlier form of the Witenagemote had some authority over the finances, while later the administration of the finances became solely vested in parliament, or the Cabinet which is really a committee of parliament, and the control which parliament exercised over the finances gave it also control over the crown in general administration. It never was so in France, there the States

General never exercised its legitimate authority, and the royal power supported by its feudal dues, by its dues as grand suzerain, by grants which were permanent and by forced loans was rendered independent of the people, not only in its financial arrangements but also in its general administration.

## LECTURE XXXI.<sup>1</sup>

### EDUCATION DURING THE MIDDLE AGES.

In studying history we naturally direct our attention to the material forces at work, because they are the more evident, and we are apt to forget that they are after all only of secondary importance, and that it ought to be our main object to find out the moral forces, or the great principles which underlie the material forces, and have given them their power and their value. Our opinions are simply our modes of viewing these principles, and of discovering how they could have been best applied to the interests which they may have effected. Public opinion is in like manner the mode in which the masses regard the same principles. But public opinion

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1. Books consulted :—Die Entstehung der Universitäten des Mittelalters bis 1400, von P. Heinrich Denifle, B. I. Geschichte der Hohenstauffen und ihren Zeit, Von Friedrich von Raumer, B. V. and VI. Geschichte des Römischen Rechts im Mittelalter, von Freidrich Carl von Savigny. Dissertazioni sopra le Antichità Italiane di Ludovico A. Muratori, Dis. 43 and 44. The origin of the University of Paris, Article by H. Rashdall in the English Historical Review, October 1886. L'Université de Paris sous Philippe Auguste, par Achille Luchaire. L'Istruzione in Italia nei Primi Secoli di Guilielmo Giesebrecht, Tr. di Carlo Pascal. (German edition is out of print.) Li Scuoli e l'Istruzione in Italia di A. F. Ozanam, Tr. di G. Z—i.

is generally moulded by the more able thinkers, who have a better opportunity of considering these principles; and their theories are their manner of applying the principles under consideration, and of seeking to solve the problem of how they may be best directed to achieve the moral good of mankind; and they seek to impress their views on the minds of the masses, who may have neither the time nor the capacity for forming an independent opinion. It is education which can alone give the power of forming such independent opinion, and by which the individual mind can be raised to an appreciation and application of those principles which may contribute to the general welfare.

The history of education is then largely the history of the means which have been used to mould public opinion, and through public opinion to improve the civic, social and individual well-being of the different classes of society. In fact in no way can we better estimate the condition of society than by seeking to know the degree of education which had been reached, and how far it may have extended. The character of the literature will not always be a safe criterion by which we may judge as to the moral or mental elevation of a people, for literature like art may be limited as to the number of those who may cultivate it, or even appreciate it. Indeed art and architecture may have a more

extended influence than literature, for they are at all time open to the inspection and study, even of the masses, without previous preparation, and may elevate the intellect by our trying however feebly to understand the conception which the artist has sought to express in his work.

The period from the sixth to the thirteenth century is often called the Dark Ages. Not so much I take it for the dearth of literature as because education was so limited in extent. It would be highly improper to say of those centuries that they were wholly without literature. We must admit that the literary style was faulty, was rugged and uncouth, and the poetry of the period endeavours to make up for the dearth of poetic sentiment by the rythm of the verse. The artistic taste of those centuries was however very remarkable. From the tenth to the fourteenth century were built most of those cathedrals, monasteries, town halls and palaces, which in the purity of their architecture have been the admiration of all future ages, and have afforded models which we are content to copy, but cannot rival.<sup>1</sup>

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1. The Mosque of Cordova was begun in 786. The Church of Sta. Maria La Blanca at Toledo, once also a Mosque, belongs to a century later. The Alhambra was begun in the middle of the thirteenth century. These are beautiful examples of Saracenic architecture. The original Cathedral of Treves claims to have been built by Helena,

With regard to the sacred hymnology of the same period, if it is sometimes wanting in the regularity of its metre, yet in its elevated tone of Christian poetry, and in the purity of its Christian sentiment as represented in the hymns of Bernard of Clairvaux, and others of a little later date, it is in striking contrast with the sentimentalism and the coarse realism of so much of the hymnology which is popular at the present day. We must also not forget that the age produced an Alcuin, a Thomas Aquinas, an Anselm, a Bonaventura, a Scotus Erigena, an Abelard, an Arnold of Brescia, as well as a Bernard of Clairvaux. No doubt the teaching of scholasticism, and the discussions on realism and nominalism may seem to us arid, and without any attraction, but it could not have been so to those who so earnestly engaged in those studies. As was remarked in a late lecture we must admit that the aim of

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the mother of Constantine, but took its present form in the beginning of the tenth century. The Cathedrals of Maintz, of Worms, and Spire, all belong to the earlier part of the twelfth century, while the fine old church at Hildesheim, and the Abbey of Corvey were built a little earlier. Many of the fine old Romanesque churches of North Italy can lay claim to greater antiquity. In the eleventh century was built the beautiful Cathedral of Pisa, and a century later the equally beautiful Baptistry. The Church of St. Ambrogio at Milan was begun in the ninth century, though not finished till the thirteenth. The beautiful Gothic Cathedral of Strassburg was begun in the closing years of the eleventh century, but only finished in the middle of the thirteenth. The Cathedral of Cologne is of a little later date.

scholasticism was high, for its purpose was to arrive at some better knowledge of God, and of the relation in which man stands to Him.

The period from the sixth to the thirteenth century was not then so much a dark age as it was a period of transition. The old pagan world had failed in many respects to elevate mankind, and a new world founded on principles essentially distinct was being established. From the age of the Antonines the Empire had declined morally and socially, and there was really no name of literary eminence after Julian, nor can we recall any great work of Roman art after that period, while even the language was losing its purity, its force and beauty as a grammatical language. After Constantine, the church stood in strong antagonism to paganism, and the recollection of the long and bitter persecutions, which the Christians had suffered, was certainly not likely to soften that spirit of opposition. Though we can easily account for the attitude of the Christian church towards paganism, we must yet regret the length to which that antagonism was carried, and which showed itself in a repugnance to the study of the classics of Greece and Rome.

It will be admitted that Pope Gregory I. was a representative man of the Middle Ages. Few of his contemporaries had enjoyed such early advantages, or were so well read in classical

literature, yet so strong was his opposition to anything that savoured of paganism, that his writings seem to show a studied neglect of the simplest rules of grammar, and are marked by many of the defects of the corrupt Latin of the later Empire. In one of his addresses to his clergy he says in reproving them for their study of pagan literature, "I regard it as a great indignity that the words of God should be constrained by the rules of Donatus." On another occasion he reproved Desiderius, Bishop of Vienne, because he had expounded to some scholars, the rules of grammar, and adds: "In the same mouth should not enter the praises of Christ, and the praises of Jupiter." In all other respects, Gregory was able and liberal, a statesman of a high order, and enjoying the greatest respect of his contemporaries, but his hatred of paganism was so strong that it led him, not merely to discourage, but even to vituperate liberal, classical studies.

A story is preserved by Radulphus Glaber of one Vilgardus, who had devoted himself to the study of grammar, and was proud of his knowledge of the Latin poets, that one night some demons appeared to him under the form of the poets, Virgil, Horace and Juvenal. They congratulated him on the ardour with which he had studied their works, and increased their authority, and as a reward of his labours they promised

to associate him with themselves in their glory. It is added, "that seduced by this infernal malice the poor grammarian entered with renewed energy on his studies, and began to teach many things not in accordance with the faith, even affirming that much confidence should be placed in the words of the poets." At length convicted of heresy he was excommunicated by the Bishop of Ravenna. Mention is also made of one Ratherius, who in his younger years had given much time to the study of the classics, but no sooner did he become Bishop of Verona, than he inveighed strongly against those teachers who neglected the only true and eternal wisdom, and turning from sacred history gave their attention to ancient fables. A contemporary, Gumpoldo, Bishop of Mantua, was not less bitter in his condemnation of the pursuit of profane, instead of divine literature.

But besides this strong opposition of the church to the study of the classical writers we must bear in mind that Italy, and the provinces were for two centuries subject to invasion by the Gothic tribes, and that during that interval there was little inclination or opportunity to devote to study, so that we need not be astonished at the decline of classical learning. Theodoric the Ostrogoth, established schools in his Italian kingdom, and Boethius, Symmachus and Cassiodorus enjoyed his favour. But this was merely

a break in a long series of sufferings, and intellectual depression.

But the extreme indignity and suffering to which Rome was especially exposed reduced her apparently to a lower intellectual condition than any other part of Italy. From the sixth to the thirteenth century she produced no scholar of any eminence, while during that period, France, Spain, England, Ireland, and even Germany had men of much learning and intellectual ability. It is also worthy of note that the subsequent revival of literature began, not at Rome or within the Papal States, nor among the pure Italian stock, but in the Italian provinces, and generally with those of Gothic parentage.<sup>1</sup> It would seem that the great social evils which degraded the closing years of the Roman Republic, and which continued throughout the period of the Empire, as well as in the long wars with the Goths, and may we not add the opposition of the church to classical learning deprived the Italians of all intellectual vigour. On the other hand the Goths, possessed naturally of a strong intellect, and elated by their repeated victories, entered on

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1. So early as 1028 Benedict a monk of Chiusi wrote, "In Francia est sapientia, sed parum; nam in Longobardia, ubi ego plus didici, est fons sapientiae." Luitprand, Bishop of Cremona, and who was sent by Otto I as ambassador to the Greek Emperor, in his report of his embassy speaks of the Romans of his day in the following terms: "Eos nos Longobardi tanto dedignamur, ut in inimicos nostros commoti nihil aliud contumeliarum nisi, Romane dicamus."

their new life with much physical and mental energy. They had accepted Christianity, not the orthodox faith of the Roman church, but Arianism, to which they long clung with the tenacity of their determined character. At length brought within the fold of orthodoxy, those northern provinces infused a new energy into the church. Milan threatened to deprive Rome of her position as head of the church, and she became the centre of the early missionary enterprises. Ambrose, Bishop of Milan, gave to the Roman church the Litany, to which she still adheres, and also contributed largely to her choral services, and the Ambrosian chants still give a strong attraction to the church's vespers.

Italy, however, was not without her schools, though their studies were not directed to ancient classical literature. In the anti-chamber of the catacomb of St. Agnes at Rome may still be seen the desk or pulpit of the catechist, and the benches of the Catchumens, and there is no doubt that from that time the church established schools throughout her many parishes. The work of establishing and maintaining these schools devolved at first exclusively on the church, and an act of the Council of Baisan in 520 attests that teaching was regarded as a part of the sacred ministry, and it was later enacted that priests who held parishes should receive into their houses young readers for the purpose of

instructing them, as good parents instruct their children. In the darkest period of the Lombard invasion, when Italy seemed threatened with a long and dismal night, there were still two sources or centres of light in the episcopal and monastic schools. Pope Gregory I. founded a school for church music, (*Schola Cantorum*) and endowed it with land, and two residences, one near the Basilica of old St. Peter's, and the other at the palace of the Lateran. An annotator, in referring to this foundation of Gregory, reminds us that music was the last of the seven liberal arts, and implied a knowledge of the others. He adds that in the ninth century the higher class of the Roman clergy came from the school of the Lateran, and that Sergius II. and III. were taught there not only in religion, but in letters also, (*communibus literis*), as well as in the Latin metres, for the hymns of the church still followed the laws of quantity, and revived the ancient rythms of Horace and Catullus. In some of these schools the rudiments of Greek was taught, for Greek still preserved its place in the litany of the church, and Greek anthems were still executed by the choir of the papal chapter, on the principal fetes of the Christian year. Greek, however, was very imperfectly taught, though so late as the close of the thirteenth century it was almost exclusively used in Sicily, and some parts of South Italy. From the

school of the Lateran teachers were sent to France and North Italy, to give instruction, not only in church chanting, but in grammar and arithmetic. This school was also the pattern of nearly all the schools throughout Italy. The bishops very generally gathered to themselves a small number of clerics to whom they gave instruction in letters, but especially in the defence of the faith. Especial mention is made of the Archbishop of Milan in the seventh century, Benedictus Crispus, who instructed his disciples in the seven liberal arts. Lucca also had its schools under the portico of the cathedral, where the priests gave instruction, and the same is mentioned as observed in Pisa, and several other places of Lombardy. There is a canon issued by Pope Eugenius II., which runs as follows: "Whereas it has come to my knowledge that there are some places where there are no masters, and no care taken for the study of letters, therefore in all episcopal seats, and in the parishes placed under their charges, and elsewhere as needs may be felt, it is directed that great care and diligence should be taken in the placing of masters, and teachers who, holding schools of letters, and the liberal arts, should also so teach the precepts because in these divine commands are especially made clear and declared."<sup>1</sup> There

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1. Qui dogmata assidue doceant, quia in his maxime divina manifestantur atque declarantur mandata.

is no doubt that in most instances the bishops were very zealous in maintaining schools in their dioceses. The teachers in these episcopal schools were invariably priests, and as teaching was regarded as a part of their ministry they received no pay. In 1495 there was an act of council which laid down that if a master of a school exacted money from his pupils he should bring himself under the judgment of the church.

Those who went through the course of studies at the episcopal schools were eligible for the priesthood, and Rathurius, Bishop of Verona, expressly announced that he would admit to orders the young clerics who had been educated at the schools of his episcopal city. Milan had two schools endowed by the bishop where the seven liberal arts and philosophy were taught by two priests, of whom it was said that they were versed in Latin and Greek.

But while the episcopate multiplied its educational foundations the monasteries were also ready to receive not only the scholars destined for the cloister, but secular clergy also. As we have already had occasion to remark, throughout the Middle Ages the monasteries of the order of St. Benedict surpassed all the other orders in the cultivation of learning and the arts. Two of these Benedictine monasteries, Bobbio and Casino, situated at the two extremities of the peninsula, early opened their doors, not merely as the

asylums of faith and piety and penitence, but as schools of learning to receive and educate the children of parents, who wished to dedicate them to the service of God, and children quite young were readily admitted to these Benedictine schools. But there is reason to believe that at first the instruction imparted in these schools was not more than sufficient to obtain a knowledge of the teaching of the church, or what were called sacred studies, and that Benedict himself rather discouraged the monks from giving themselves to any extended study of the liberal arts. The influence of Paulus Diaconus was calculated a little later to give to the studies at Monte Casino a wider scope. After a life of hard literary work, he retired to that monastery to devote himself wholly to study, and to the discipline of a monastic life. He soon, however, became a teacher, and acquired an extended reputation. Stefano, a Neopolitan bishop, sent young men to receive their education especially from him. After his death a number of the brethren of his monastery, following his example in pursuit of a wider knowledge than had been the practice previously, acquired from their contemporaries much praise for their literary attainments. One of his scholars. Ilderico, composed some verses in his honour, which are above the average of the time, and he also wrote a treatise, *De Arte Grammatica*, which was much commended, and

copies of which are still preserved in the library of the monastery. From that time, and largely due to the influence given by Paulus, the instruction imparted in the Benedictine monasteries was extended, and devoted to the study of ancient classical literature and to philosophy. We are especially indebted to the Benedictine monasteries for the trouble which they took in gathering from all quarters manuscripts not only of contemporary writers, but of the classics of Greece and Rome, and even of the works of Arabic writers, as well as for the diligence and skill which they showed in copying, and circulating the copies of the manuscripts. It was then very difficult to procure writing material. The Egyptian papyrus seems to have been quite exhausted before the eleventh century, and parchment could only be procured in limited quantity; cotton paper was found to be not serviceable, and paper made from linen had not yet come into use. The monks unfortunately had recourse to palimpsests, and as they were by no means always judicious, nor possessed sufficient general knowledge, there is reason to fear that valuable writings were often erased to make room for far inferior.

Besides these episcopal and monastic schools, secular, or more properly public schools were established at least in the north of Italy, and in the Lombard States of Beneventum and Salerno.

These were probably established by Charlemagne. I can find no definite statement regarding them, but Charlemagne certainly established similar schools in France, and we have an edict of the Emperor Lothair in 825, which, after stating the needs of these schools, proceeds: "We have designed for this purpose certain places so that neither distance nor poverty may furnish an excuse for non-attendance. We wish those at Pisa under the conduct of Dungalus should assemble the scholars of Milan, Brescia, Lodi, Pergamo, Novara, Vercelli, Tortona, Aquì, Genoa, Asti and Como." In a similar way the greater part of north Italy was parcelled out into school districts, but it is doubtful if these school districts were long maintained. Some hundred and fifty years later Milan had certainly two separate schools. These public schools, if we may so call them, were generally placed under the supervision of the Podesta, or some other magistrate, and the master before he entered on his duties had to give proof of his fitness to the Prelate, so that these schools were not wholly outside the church's influence. Sometimes schools were founded by an individual, or a community, but only with the sanction of the Podesta, and in such a case the Podesta stipulated that no second school should be placed within the same district.

While the episcopal and monastic schools

were free, a small sum was exacted from those attending the public schools. In a school ordinance of the city of Bassano it is expressly laid down that no one should hold a school there without the permission of the Podesta, and whoever attended the regular appointed master for eight days should pay a month's fees, if he attended for a whole month he should pay for a full year, and the magistrates were empowered to enforce the payment of the fees. The course of studies in these schools was not extensive; it was confined to the seven liberal arts, as they were called, and which were classified under two heads. Under the first, the Trivium, were Grammar, Rhetoric and Dialectics, under the second, the Quadrivium, were included Arithmetic, Geometry, Astronomy and Music. For the class of grammar the month's fee was fifty small denarii,<sup>1</sup> and for the higher class, the class of Donatus,<sup>2</sup> the monthly fee was seventy denarii. If the scholar boarded with the master he paid one hundred and eighty denarii monthly. Similar school regulations existed in other cities of north Italy, and indeed in the northern kingdoms across the Alps also. In Germany they seem to have been especially stringent. In a school ordinance of

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1. The Denarius was worth about 9 pence or 18 cents.

2. Donatus was an eminent scholar of the fourth century and wrote a work on the structure of the Latin grammar entitled *De Arte Grammatica*, which was the text-book during the Middle Ages.

Worms in 1260 it is stated that no one should be turned from the school on account of poverty, but as it was found that some went to school for their nourishment the master was to charge a small fee, but whoever attended the school for eight days was to pay for the whole year. Any teacher who should use improper means to attract scholars from another school should lose his position, and no master should take a scholar who, shunning discipline, had come from another school. If, however, a master inflicted wounds, or should cause the dislocation of a bone, the scholar without paying his school fees might go elsewhere.

It is impossible to find any measures taken for the education of girls. Those who were to be devoted to a religious life were at an early age received into a nunnery, and perhaps in some cases other girls may have received their education in a similar way, but this does not seem to have been common, and there is no mention anywhere of separate schools for girls. If anyone preferred he might employ a tutor for his family, both boys and girls, and this was not uncommon among the nobles, and the more wealthy. In the thirteenth century Aristotle attracted very general attention much to the indignation of the seven liberal arts. A satirical poet of that day represents a great tournament in which Priscian and Aristotle were ranged against each other,

and in like manner Donatus and Plato. The poets were marshalled under Priscian, while Baron Barbarismus came to the aid of Aristotle. He is represented as a feudatory of grammar, but had large possessions in the province of logic, and was induced to take the side of Aristotle. The contest was long, and undecisive, but at last Astronomy becoming weary brought up a thunder storm, and the poets under Priscian fled from the field. The story evidently expresses how completely philosophy was becoming more attractive than other departments of study.

It was natural that some of the schools should acquire a higher reputation than others, and in proportion as their reputation grew so would their influence and their power of instructing students increase. Nearly all the earlier Universities developed in this way. It is however usual to attribute the founding of a University to some great king, as the University of Paris to Charlemagne, and Oxford not to be outdone claimed Alfred as its founder, while Bologna is said to have been established by Theodosius II. There is no foundation for these several claims. It is far more probable that the Universities grew very gradually out of the schools, and this seems strengthened by a consideration of the fact that the earlier Universities were distinguished in simply one faculty, to

which the eminent ability of a teacher had given peculiar prominence. The term University is of later date, subsequent to the establishing of several faculties in the same grouping. Throughout nearly the whole of the Middle Ages they were merely called schools. Thus Paris, and we may add Oxford, were schools distinguished for theological studies. In like manner Bologna and Padua were great law schools, while Salerno in the Lombard principality of Salerno in South Italy, and Montpellier, were great medical schools.

In the fourteenth century Charles of Anjou founded a University at Rome, and this is regarded as the first instance of the founding of a University by an individual. Being a good churchman, and to a large extent dependent on the support of the Pope in his opposition to the House of Aragon, and humiliated it would seem by the thought that the city, which had been so long the mistress of the world, and the head of the Christian church, should have no great school of learning, determined on founding one there. But however strange it may seem, Rome never attracted any great minds, and from the very first the University founded there by Charles of Anjou proved a failure. More than once closed, it has ever and again revived to a very sickly and uncertain existence.

## LECTURE XXXII.<sup>1</sup>

### EDUCATION DURING THE MIDDLE AGES.

The constitution of these great schools or universities differed very much. The corporation of the University of Paris in the fourteenth century was formed of the collective body of the teachers. It was only in the beginning of the fourteenth century that a body of statutes was framed, and even this was very limited. About the same time it was incorporated, not that it received a regular charter, but that it formed a collegium or societas, which had some form of legal recognition. Oxford does not seem to have had a royal or a papal charter. It is spoken of as existing "ex-consuetudine," and a writing of the Cardinal-legate Otto in 1238 characterizes the school as "studium generale" or as "universitas magistrorum et scholarium." Any constitution which existed in Oxford was modelled after the great school of Paris. The Bishop of Lincoln, who was also master of Oxford, refers to an order of study, "Ne——

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1. Books consulted :—The same as for last lecture with the addition of *Munimenta Academica Universitatis Oxoniensis* edit Rev. H. Anstey, Roll Series.

a patrum et majorum vestigiis et conformitate regentium Parisius theologorum manifeste recedatur," and Innocent IV. in 1246 directs the bishop to be careful that no one should hold the office of teacher, "nisi qui secundum morem Pariensem examinatus fuerit." Bologna, likewise does not seem to have been constituted by any charter. In a document of Frederic I., 1158, (*Authentica Habita*) he recognizes the law school of Bologna as a corporation, but this in no sense constituted it as a University, or gave it any powers. Though not owing its incorporation to any formal act, it yet had a constitution, which differed from that of the University of Paris. The corporation of the University of Paris was formed of the collective body of the teachers, who were invariably ecclesiastics, and who held full authority. In Bologna the students themselves formed the corporation. The great body of the students, including the graduates, chose the rector, to whom they afterwards rendered entire obedience, and who appointed the inferior officers, though the students seem to have chosen their professors, or rather perhaps attached themselves more closely to some more able teacher.

Bologna afforded a pattern to the Universities of Spain, to the other Universities in Italy, and to some in France, while those in England and Germany adopted the system of Paris. It

may not be difficult to account for these different systems. Paris was a great theological school, where submission to the church, and to those in authority in the church was a fundamental principle. Bologna on the other hand was in the very centre of the great democratic influences of the Lombard republics.

The number of students attending the several great schools appears to have been large. Bologna, in the thirteenth century, was attended by some four thousand. In the reign of Henry II., Oxford is said to have had six thousand in attendance on its classes, and in the reign of King John, on the occasion of a quarrel between town and gown, when two townsmen were killed, and John ordered the execution of some of the ringleaders among the students, no less than three thousand left, and went to Paris, while others went to other Universities on the continent.

There was no hall in Paris large enough to accommodate the students attending the prelections of Abelard; it is said that they numbered thirteen thousand, and when he was obliged to leave Paris a large number followed him to his retired cell in Champagne, where they built for themselves cabins, and lived on the roots and wild vegetables which the woods afforded. This too in opposition to the denunciation of the Council of Sens, and to the counter-attraction of St.

Bernard, and other orthodox teachers. The students attending on Abelard showed a zeal and eagerness for knowledge which find no equal in later times. A distinguished teacher may in our day attract a large number of students, but where, as Von Raumer remarks, will you find students who would follow a teacher into the seclusion of a forest, build huts for themselves, and live on roots in order that they may enjoy his prelections?

The students were not generally from the higher classes of society, but from the poorer. Houses were often provided for these poor students, and it was to these students' residences that the name of college was at first given. In 1250 Robert de Sorbonne established such a residence in Paris for poor theological students, and this has ever since been known by the name of the Sorbonne. Later it became the home of the great theological faculty of the University of Paris.

The students in the several Universities were classed according to nationalities. This was quite in keeping with the prevailing custom. The towns were generally apportioned into wards, which were assigned to different arts, as drapers, goldsmiths, etc. These wards in the Italian cities were called *Artes*, but in many instances they were apportioned according to nationality, as in London, the Hansa had their special quar-

ter, as also had the Jews, and others, but this is most strikingly exemplified in the Levantine cities at the time of the crusades, when each of the Italian republics had a separate quarter assigned it, which was walled in, and whose distinctness was scrupulously observed. In a manner somewhat similar the students had their separate unions and residences. At Bologna the Germans seem to have been classed by themselves, while the French and English were connected as were the Catalonians and Provençals. Later the division was reduced to a simple one of Citramontani and Ultramontani. These are spoken of as constituting two colleges, and each elected its own rector. Padua had the same combination. In 1268 the Ultramontani at Bologna included no less than thirteen nationalities. The Germans seem to have enjoyed some special privileges, and it was stipulated that the rector of the Ultramontani college should every fifth year be a German.

In Paris the students were grouped under four classes, as French, Picardians, Normans, and English, and other nationalities were classed under these. This classification however was soon departed from, and in a general order issued by St. Bonaventura as rector it is specified, "Quod secundum quatuor octonaria provinciarum, videlicet Hispaniorum, Alemannorum, Lumbardorum et Romanorum essent." It is

likely that the Octonaria referred to a subdivision into provinces.

In the Italian universities each division elected a Cancellarius, and it was these Cancellarii who elected the rectors so that they were chosen by an indirect or double election. The Cancellarii formed a council, and in most of the Italian Universities this constituted with the teachers the Senate. In some cases there was a larger council, the members of which were chosen from the citizens. In Pistoia it consisted of a hundred, twenty-five from each of the four districts or wards, into which the town was divided.

The average age of the students was thirty-five years, and they remained a longer time in attendance than is usual at present. The instruction was entirely oral, for there were few books, and such as could be procured were very costly.<sup>1</sup>

In Paris the teachers had full control over their own students, though in matters of civil jurisdiction the bishop exercised authority, but the Parliament of Paris also claimed some judicial power, though perhaps more generally in criminal cases.

I mentioned in a previous lecture that the

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1. Der Cardinallegat Robert de Courçon bestimmte 1215 für die Theologen, 'quod nullus Parisius legat citra trigesimum quintum aetatis suae annum, et nisi studuerit per octo annos ad minus, et libros fideliter et in scholis audiverit, et quinque annos audiat theologiam, antequam privatas lectiones legat publice.

study of Roman law had been excluded from the University of Paris. Savigny seems to think that this referred merely to the study of the Pandects, and not to the general principles of Roman law.<sup>1</sup> But there does not seem to have been any reservation in the several canons of prohibition. The result naturally was that more attention was given to the study of canon law, and this led to the erection of a special faculty of canonists, and by the charter of canonists in 1370 a student might receive his degree in law, and teach without having studied Roman law. But notwithstanding the general opposition to the study of Roman law it was diligently pursued, not only at Bologna and Padua, but in other of the Italian schools, and in some few in France, as also in Germany, and after the reign of Edward I. it took a prominent place in the studies of Oxford, though it had been previously strictly prohibited.

It may now be proper to return to the question which we suggested at the beginning of the last lecture as to how far education affected public opinion in the Middle Ages. The subject is an intricate one and we can at best arrive at only imperfect conclusions. It is, however, a subject of great importance, and it will be quite proper to gather what information we possibly can. We have stated that there were three classes of

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1. Savigny *R. Röm. Mittelalters*, B. III, s. 374.

schools, the episcopal, the monastic, and the public schools, and it seems that the higher schools which ultimately developed into the universities owed their origin to the public schools, rather than to the episcopal or monastic. The High Schools or Universities in the thirteenth century were numerous, Italy counted twenty, France nine, Spain nine, Germany seven, England two, Ireland one, Switzerland one, Bohemia one, and Poland one. There were also three great schools in Paris which were affiliated with the University, while the High Schools of Macerta, Lyons, Brescia, Messina, Palermo, Vienne, Pistoia, Mantua, Parma, Todi, Valladolid, Narbonne, Rheims, and Palma, in the Island of Majorca, all arrived at considerable eminence. These, however, according to Denifle, never acquired the rank of universities, though several received briefs of incorporation from various Popes, as Rheims from Alexander IV. in 1257.

These schools were devoted to particular studies, and indeed Denifle goes so far as to say that similar schools were distributed everywhere throughout Europe.<sup>1</sup>

There can be no doubt that through these several means learning was widely distributed in

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1. Denifle p. 227. Solche Schulen, sogenannte Particularstudien waren  berall zerstreut. Hie und da konnten dieselben sogar einen Stiftungsbulle aufweisen und hie und da auch Collegien f r arme Scholaren gegr ndet waren. Denifle had access to the Vatican archives.

Western Christendom, and this not among the privileged classes only, but even more largely among the poorer,<sup>1</sup> and it seems to have been pursued with a zeal and enthusiasm which has been rarely equalled.

It is difficult to form any exact idea of the results of this wide extension of learning. No doubt the studies pursued in the several schools were not of a very elevating character, and the different governments of Europe, whether the papal or the secular, were too arbitrary and despotic to allow independent expression of opinion. It is quite true that the Church of Rome encouraged this earlier revival of learning, and there was as yet no Index Expurgatorius. It was not till the Council of Trent that the church issued any formal edition of her faith. There were several creeds, such as the Athanasian, and determinations of councils to which assent was required, but it was the expression of the Protestant views which really compelled the Church of Rome to give a distinct avowal of her faith, such as was issued by that celebrated council. She had been rather tolerant of the different

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1. The higher classes rather discouraged learning. Wood in his History of Oxford, mentions an occasion when two poor students having arrived at a baronial residence sought a little assistance. The baron and his friends ordered that they should be lowered in buckets into a well, and they were not released from their awkward and humiliating position till they composed a verse of poetry. This treatment was much enjoyed by the baron and his friends.

philosophic views of the schools of realism and nominalism so long as these opinions did not touch on the political, and we may add, the social and moral character of the Papacy.

But I think I am fully justified in attributing to the dissemination of learning through the schools, which now for three centuries had been actively engaged, the great Renaissance of the thirteenth century. To my mind the intellectual movement of that century was impossible without a previous general diffusion of knowledge. It is not merely necessary that there should be master minds which should propound problems intellectual, social, spiritual, and political, but quite as much that there should be scholars who can understand and appreciate the questions which may be presented to them, and no century was more pregnant with thought, none more big with important schemes, none more active in seeking to give life and force to those schemes than the thirteenth. That century has a distinctive, if somewhat mysterious character, which rather tends to lend it peculiar attractiveness. The darkness and cruelty of barbarism was still lingering as we see it in the Albigensian crusades, or in some of the earlier literature of the period, while there was at the same time a literature as well as an art and architecture which seemed to express a brighter and a purer spirit.

Let us recall some of the principal events which gave a distinctive character to that thirteenth century. It began with the election of Innocent III., perhaps the most successful of the Roman prelates, and the most characteristic of mediaeval Popes; it ended with the humiliation and death of Boniface VIII., to be succeeded by the captivity at Avignon. With Innocent the papacy reached its greatest power, and its highest dignity, when it was engaged in its bitter struggle with the Hohenstauffens, when too Philip Augustus was obliged to submit to papal authority, and to take back the wife whom he had discarded. It was then too that the two great mendicant orders of the Franciscans and Dominicans were founded, destined to become the great religious militia of the church. Under Innocent we see the unity of the church, its oneness of design and character. With Boniface and the subsequent removal to Avignon it lost that unity, never to regain it. In the intervening period we see the culmination, the extravagance, and humiliation of the Papacy. Before the end of the fourteenth century, on the return from Avignon, there was the great Schism, and a succession of anti-popes, and in the beginning of the sixteenth century the Reformation.

The attempt of the papacy in the thirteenth century to establish a great united christendom

had been too strained, too illiberal and too despotic.

Contemporary with the great effort of the Papacy there was a movement taking place in Western Europe in a direction entirely different. The feudal system with its limited interests, and its narrow but intolerant despotism, had yielded to the great power of the Monarchy on the one hand, and the growing independence of the Commons on the other. I pointed out to you in previous lectures the advance of the towns in the several states of Europe, and their struggles for enfranchisement. In the same century there was a great development of manufacturing and commercial interests in these towns, and a large number of them rose to wealth and importance. This afforded a great change in both their social and political character. Now for the first time the towns of Europe sent representatives to take part in the National councils. The establishment of representative assemblies in Spain, and in Sicily may have taken place in the middle of the twelfth century, but it was only in the thirteenth that they acquired any importance, and took an active part in legislation. It was in 1265 that the Simon De Montfort Parliament met in England, and in 1295 that Edward I. summoned the first fully constituted parliament which was called the Model Parliament, for it gave the form to subsequent assemblies. It was in this century

too that representatives from the free cities for the first time sat in the Diets of the Empire. The first States General of France may also be regarded as belonging to this century, for it met for the first time in 1302.

The period was also distinguished by able monarchs or great administrators. Philip Augustus was on the throne of France when the century opened and was followed by Louis VIII., who only reigned for a short time. He left the throne to Blanche of Castile as Regent. A wise administrator, and who carefully educated her son, so that he became the most righteous, as well as one of the most able rulers that ever occupied the French throne. He was followed by Philip le Bel, who subjected the papacy to his authority while he at the same time administered the affairs of the kingdom so happily, that it attained to a position such as it had not before reached. Before the close of the thirteenth century Spain became a great kingdom under Ferdinand III. and Alfonso X. Louis

In Germany as well as in Sicily the reign of the second Frederic fills a large space in the history of the century, to be followed by Rudolph of Hapsburg, by Albrecht of Austria and Henry of Luxemburg.

With the last year of the twelfth century died England's adventurer king, Richard I., and with him closed the crusades as a great military

movement. In 1215 the Magna Charta was wrested from John, and from that year till 1295, when Edward I's model parliament met, the period was marked by a great struggle for constitutional liberty under the guidance of such men as Stephen Langton, William Marshall, Earl of Pembroke, and Simon de Montfort.

But the thirteenth century was above all things the age of the lawyer and the legislator. The charter of John established the principle of taxation through the common council of the realm. In the middle of the twelfth century, in the reign of Henry II., Ranulph Glanvill composed at the king's command the *Tractatus de Legibus Regni Angliae*. The impulse given at that time to legal studies produced the first systematic exposition of English law by Henry de Bracton in Henry III's reign. Under Edward I. the principles were put into practice by learned lawyers, who had studied law in the schools of Italy, or in the law schools which Edward had, with the aid of the Italian jurist, the younger Accursius, established at Oxford. Edward is often called the English Justinian, and in his reign were issued some of the most important statutes in the English Statute Book.

In France, Philip Augustus, St. Louis and Philip le Bel transformed the whole character of the laws. The several ordinances of Philip Augustus, the *Etablissement* of St. Louis, and the

Parliament of Paris, with the several courts, which grew out of it and the Grand Conseil, mark the very great change which had taken place in France in legislation, and in judicial procedure during this century.

Frederic II. in Germany and Sicily, and Alfonso X. in Spain also changed the jurisprudence of these countries.

In an earlier lecture I pointed out that it was in this century that art and architecture took its most remarkable development, and when were built so many of those cathedrals, town halls and chateaux which have been the admiration of all succeeding ages.

But this century is not less noticeable for its philosophical and theological discussions. The theology and learning of the monasteries had yielded to the learning of the Universities, and it was now, not so much the learning which had its home at Cluny or Clairvaux, at Canterbury or Croyland, but rather that which was centred at Paris or Oxford, at Montpellier or Cordova, at Bologna or Padua. It is true that Thomas Aquinas was a Dominican, and began his studies at Monte Cassino, but he afterwards carried them on at Naples, Cologne, and Paris, while his great master was Albert of Cologne, who had studied at Bologna and Padua. Dun Scotus, with Thomas Aquinas, William of Ockham, Roger Bacon, and Bonnaventura, all belong to this

century, and were the last of their school. It was not till some three centuries later that philosophy awakened to a new life, and Sir Francis Bacon, Descartes, Spinoza and Leibnitz gave it a different direction.

It was, however, not only in philosophy and theology that the century was remarkable, but in poetry, romance and history. Besides the rich hymnology, including the *Dies Irae* and the *Stabat Mater*, and the hymns of Thomas Aquinas and Boneventura, were written a good part of the *Roman de la Rose*, and the *Golden Legend*, as well as the Arthurian legends, and the poems of the Troubadours, while critics are almost unanimous in attributing to this century the great northern Sagas of the *Nibelungenlied*. Dante's *Divina Commedia* did not appear till the eighth year of the fourteenth century. It was, however, most probably designed, if not begun, in the closing years of the thirteenth. It breathes the spirit of that century, yet it has a transitional character, and seems to anticipate something of modern thought, and still more of modern art. Petrarch is only separated from Dante by a few years, yet he is essentially of a modern type, and is generally regarded as the restorer of polite letters, as he gave an impulse to the study of the ancient classical writers. Among historical writers of this century Froissart and Villehardouin stand out with particular prominence.

These several movements in social, political, legal and literary development are undoubtedly largely due to that dissemination of learning which had begun in the schools of the ninth century, and had since been carried on though with some interruptions.

No doubt the influence was mutual, and while the dissemination of learning led to the great social and literary movement of the century, this movement on the other hand gave encouragement to the exertions of the schools, yet from various causes the development of the thirteenth century was followed by a partial stagnation of literary effort. This was no doubt due in a large measure to the several wars which had desolated Europe, as the Hundred Years' War, which resulted in the destruction of so many of the monasteries, and the ruin of many of the towns of France. In England the Wars of the Roses were also attended by great evils, which told very seriously on the several classes of society. In Germany as well as in Italy social life was not less disturbed through the constant internal struggles of the different powers in the state, either of the princes for supremacy, or of the towns contending in jealousy with one another.

## LECTURE XXXIII.

### THE CLOSE OF THE MIDDLE AGES.

I have now traced the development of civilization during the Middle Ages, and have considered it in its several phases. I have sought to picture the foundation of new nationalities on the ruins of the Roman Empire, and of the formation and growth of the feudal system, and also the establishment of the imperial power in its close connection with the Papacy. I have considered the struggle of the Communes for freedom in the several countries of Western Europe, as also the character of the legal systems, especially such as existed in France. I have called your attention to the growth of the Papacy, and its pretensions to universal supremacy, as also to the immunities and privileges of the Gallican church, and the gradual encroachment on these by the royal power. We have also studied together the national assemblies, and especially the States General in France that at one time gave hopes of forming a constitutional government, which however it failed to accomplish. We have taken a cursory glance at the economy of the Middle Ages, as also at the system of education, and the

formation of Universities. The ground over which we have gone has been too extensive to permit us to form anything more than a very limited apprehension of the subject. I mentioned to you at the very outset the necessity of limiting our view, and I proposed to take France as the more *éspécial* subject of our study because it best shows the connection of the civilization of modern times with that of ancient Rome, and because it was more typical than any other country of the general character of mediaeval civilization, and enables us to see very clearly the development of monarchical government, which especially marked the period we have been considering.

It is not a little interesting to notice how even the more enlightened and the more experienced of the Italians regarded the state of France at the close of the Middle Ages. Wearied and disgusted with the storms of republicanism to which their own country had been subjected, they felt that the Podesta elected by the community, and responsible to it, and therefore largely dependent on it, had not such power to suppress disorders as had a simple supreme chief, who inherited his prerogatives. They saw and they approved of the means by which royalty had gradually extended its possessions, they noted the growth of the judicial power with the supreme court or Parliament, and they found, even in the gradation of ranks, as exemplified in the States General,

much that was worthy of commendation—the nobility exempt from taxation, and with their many exclusive privileges, the clergy with the conduct of their own affairs, and with the right of election, and the burghers enjoying personal freedom and eligible for certain subordinate offices. Comparing this state of things with the confusion, the intrigues, the plots and the neglect of law and justice, which their own republics presented, it is not to be wondered at if they saw much to be admired in the form of the French constitution. But if they saw the evils of their own democratic government they, in their administration of an opposite state of things, did not see that evils equally great may exist in an absolute despotism, such as France had reached.

The prudence and care of Louis XII. prevented the evils of a despotism from showing themselves, and during his reign France enjoyed a period of internal prosperity. The monarchical principle which had grown up with the nation itself, and had been confirmed by the several storms through which it had passed, held all together. It was still modulated by law and usage, and had not as yet become very oppressive. Louis was succeeded by Francis I., a king of a somewhat different stamp. He was more energetic, and more venturesome than Louis, and was not long in showing his dissatisfaction with what he regarded as the defects of the preceding

system of administration. He thought that Louis had resigned too many of the rights of the crown, and that he had been too pliable to parliament, especially in regard to ecclesiastical affairs such as the self-government of the clergy. Francis therefore determined on asserting his full authority in his own dominions, and of impressing Europe with the importance and brilliancy of his position. When the imperial throne became vacant through the death of Maximilian, Francis desired the dignity for himself. Charles, however, had the more direct claim for he combined in his own person the inheritance of the Austrian and Spanish thrones, as also of the territories which had been held by Charles the Bold. He was, therefore, raised by the electoral princes of the Empire to the imperial throne.

Charles V. was not a prince likely to yield to the claims of Francis to Milan, Savoy and Genoa, which had lately been taken possession of by the French crown, and he took up arms to assert the right of the Empire to these territories. The Italians favoured the claims of the Emperor and sent a contingent to his army. The battle of Pavia which resulted very disastrously for the French, and in which Francis himself was taken prisoner, settled forever any claims which France might put forth to the estates of Charles the Bold, which included the Netherlands, and secured these estates to the Spanish crown. On

his release from captivity, Francis took possession of Savoy and Piedmont, as some atonement for the loss of Milan and Genoa, and also as a protection on that side from Germany.

But when a prisoner at Madrid, Francis had formed connection with the Sultan Seleiman, and while Francis was taking possession of Savoy and Piedmont the Sultan was threatening Germany on the east, and his fleets were governing the Mediterranean.

There was a time when France had put forth all her efforts to drive the Molsems out of Europe, and later had taken the lead in the great movement to rescue from them the Holy Land, but now, she entered into close alliance with them, in order to weaken her great rival, and prevent his invasion of her territory. By this act Francis forfeited the title of the most Christian king. This, however, was only one instance showing how completely France was breaking with the past. The feudal system with its many distinctive features had passed away. The church had in a large measure been deprived of its independence, and had fallen into almost complete subjection to the crown. Many of the offices of state were however still filled by members of the higher clergy, several of whom were ambassadors to foreign courts, while later some were regents during the minority of the kings, still the kings

at the same time drew from the church very large sums for the wants of the state and extorted them with a formality and an exactness which showed the new relations in which the church might be regarded as standing.

Perhaps the reign of Francis, more than other, marks the great change which had taken place in France, or rather in Europe. It marks the close of the Middle Ages, and the beginning of a new era in government, in letters, in art, and even in the church. It marks the transition of the old to the new order of things. The mediæval retires everywhere. The old scholastic philosophy of the Universities had made way for freer studies. The mounted warriors of chivalry had given place to the infantry and artillery. A new spirit of art and architecture as well as of literature had arisen. The first fruits of a French school of painters belongs to this period of which Leonardo de Vinci was the Coryphaeus. The literature of the past, which consisted of the writings of monkish chroniclers, or of the romantic and chivalric, but often harsh poetry of the Troubadours had given place to a poetry based on the study of Virgil or even of Homer. The king himself entered joyously into the movement, and his letters and poems express the gratification which it afforded him.

The barons, deprived of their feudal privileges, exchanged the solitary pleasures of their

isolated castles for the social attraction of the court, and of the salons of the capital.

Not only religious life underwent a change but the old traditions of the church seemed to be replaced by new doctrines, and Protestantism threatened the whole ecclesiastical fabric, while we also see the idea of the most Christian monarchy yielding to the even more potent idea of the balance of power to which the infidel might contribute.

It is saying much for Francis that he discerned the spirit of his day. He encouraged art and literature in every form, he gathered around him, and made friends of almost every noble in the land, while he cultivated the sympathies of the people of the towns. In what direction was the change to trend, what was to be the result of this new order of things? The French monarchy had reached an arbitrary form where it would admit of no rival, it had overcome feudalism, it had subjected to itself the municipal government of the towns, it had controlled the independence of the church. Francis was sufficiently far-seeing and judicious to make a wise use of the great power which the monarchy after the struggle of centuries with the other powers of the state had at length reached, and he gained the confidence of all classes. He was inclined to look with favour on the great religious movement which was going on in Germany, and which had already

found adherents in France, but the rivalry of the Catholic powers in Europe prevented him separating himself from the Papacy. The great religious schism was indeed a part of a general movement, the philosophy of the Middle Ages, of idealism and realism had proved itself utterly inadequate to satisfy any longer the philosophic or religious mind. The advance of literature, the study of the Greek and Roman classics had refined the taste, and widened the intellect so that the thoughtful mind could no longer be content to adhere to that blind and unreasoning devotion which the church of Rome has always required of her votaries. Luther in Germany had at first sought to introduce reforms into the church, but finding that the church would not tolerate the slightest differences of opinion he was obliged to separate himself from her control.

In whatever direction we look we may see that a great change was taking place, that there was a transition in religious, as well as in political, social and literary life.

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